

**UNITED STATES OF AMERICA**  
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**  
**REGION 20**

**GOOGLE, LLC and ALPHABET INC., a single  
employer**

**and**

**EDWARD GRYSTAR, an Individual**

**Cases 20-CA-252802**

**and**

**KYLE DHILLON, an Individual**

**20-CA-252902**

**and**

**COMMUNICATIONS WORKERS OF AMERICA,  
AFL-CIO**

**20-CA-252957  
20-CA-253105  
20-CA-253464**

**and**

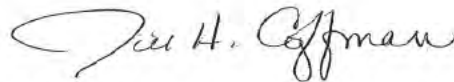
**AMR GABER, an Individual**

**20-CA-253982**

**ORDER RESCHEDULING HEARING**

Pursuant to Section 102.16(a)(1), IT IS HEREBY ORDERED that the hearing in the above matter now scheduled for **April 12, 2021**, is rescheduled to **9:00 a.m. on June 7, 2021**, and consecutive days thereafter, at the Natalie P. Allen Memorial Courtroom, 901 Market Street, Suite 400, San Francisco, California or in a manner (including via video conference technology) or at a location otherwise ordered by the Administrative Law Judge.

DATED AT San Francisco, California, this 8<sup>th</sup> day of March, 2021.



Jill H. Coffman, Regional Director  
National Labor Relations Board  
Region 20  
901 Market Street, Suite 400  
San Francisco, California 94103

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**and**

**AMR GABER, an Individual**

**20-CA-253982**

**AFFIDAVIT OF SERVICE OF ORDER RESCHEDULING HEARING**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **March 8, 2021**, I served the above-entitled document(s) by **E-Serve** upon the following persons, addressed to them at the following addresses:

Eileen Naughton  
Google Inc.  
345 Spear Street  
San Francisco, CA 94105

Eileen Naughton  
Google Inc.  
1600 Amphitheater Parkway  
Mountain View, CA 94043

Sara Kalis, Attorney  
Paul Hastings LLP  
200 Park Avenue  
New York, NY 10166

Brian Hayes, Attorney  
Paul Hastings LLP  
200 Park Avenue  
New York, NY 10166

Al Latham Jr., Attorney  
Paul Hasting LLP  
515 South Flower Street 25th Floor  
Los Angeles, CA 90071-2228

Eric Distelburger, Attorney  
Paul Hastings LLP  
101 California St Fl 48  
San Francisco, CA 94111-5871

Edward Grystar  
519 66th Street Apt B  
Oakland, CA 94609

Laurie M. Burgess, Counsel  
Messing Adam & Jasmine LLP  
235 Montgomery Street Suite 828  
San Francisco, CA 94104

Jennifer Abruzzo  
Communications Workers of America  
(CWA), AFL-CIO  
501 Third St NW, Ste 800  
Washington, DC 20001-2797

Kyle Singh Dhillon  
1183 Nelrose Avenue  
Venice, CA 90291

Amr Gaber  
1377 Minna Street  
San Francisco, CA 94103

March 8, 2021

Date

Susie Louie, Designated Agent of NLRB

Name

/s/ Susie Louie

Signature



**UNITED STATES GOVERNMENT**  
**NATIONAL LABOR RELATIONS BOARD**  
**OFFICE OF THE GENERAL COUNSEL**  
Washington, DC 20570

May 5, 2021

LAURIE M. BURGESS, ESQ.  
BURGESS LAW OFFICES, PC  
498 UTAH ST  
SAN FRANCISCO, CA 94110-1435

Google, LLC and Alphabet Inc., a  
single employer  
Cases 20-CA-252802  
20-CA-252902  
20-CA-252957  
20-CA-253105  
20-CA-253249  
20-CA-253464  
20-CA-253982

Dear Ms. Burgess:

This office has carefully considered your appeal. The appeal is sustained in part and denied in part. It was concluded that the Employer arguably violated Section 8(a)(1) of the Act by disparately enforcing its Need to Know Data Classification policy by applying it only against employees who engaged in protected, concerted activities and by unlawfully interrogating employees about the “Always-Ask-Kent” form and extension.

In addition, it was concluded that the Employer arguably violated Section 8(a)(1) and (3) of the Act by unlawfully discharging employees Duke, Rivers, and Waldman pursuant to its Need to Know Data Classification policy because they engaged in conduct protected by the Act. We are remanding these portions of the appeal to the Regional Director for further processing. Absent settlement, the Regional Director will include these allegations in an amended consolidated complaint, and an administrative law judge will hold a hearing. Please address all further inquiries to the Regional Director.

The remainder of your appeal is denied, substantially for the reasons set forth in the  
Regional Director's letter dated December 2, 2020.

Sincerely,

Peter Sung Ohr  
Acting General Counsel



By:

---

Mark E. Arbesfeld, Director  
Office of Appeals

cc: JILL H. COFFMAN  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS  
BOARD  
901 MARKET ST STE 400  
SAN FRANCISCO, CA 94103-1738

EILEEN NAUGHTON  
EMPLOYER REPRESENTATIVE  
GOOGLE INC.  
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SARA KALIS, ESQ.  
PAUL HASTINGS LLP  
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NEW YORK, NY 10166

KYLE SINGH DHILLON  
1183 NELROSE AVE  
VENICE, CA 90291

EDWARD GRYSTAR  
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EILEEN NAUGHTON  
EMPLOYER REPRESENTATIVE  
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JENNIFER ABRUZZO, ESQ.  
COMMUNICATIONS WORKERS OF  
AMERICA (CWA), AFL-CIO  
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AMR GABER  
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MICHAEL PFYL, DIRECTOR  
LEGAL – EMPLOYMENT  
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ERIC DISTELBURGER, ESQ.  
PAUL HASTINGS LLP  
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SAN FRANCISCO, CA 94111-5871

vrn





UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
OFFICE OF THE GENERAL COUNSEL  
Washington, DC 20570

May 5, 2021

LAURIE M. BURGESS, ESQ.  
BURGESS LAW OFFICES, PC  
498 UTAH ST  
SAN FRANCISCO, CA 94110-1435

**CORRECTED LETTER**

Google, LLC and Alphabet Inc., a  
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Regional Director's letter dated December 2, 2020.

Sincerely,

Peter Sung Ohr  
Acting General Counsel



By: \_\_\_\_\_

Mark E. Arbesfeld, Director  
Office of Appeals

cc: JILL H. COFFMAN  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS  
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**20-CA-253464**

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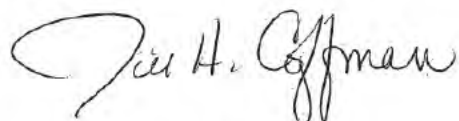
AMR GABER, an Individual

**20-CA-253982**

**ORDER RESCHEDULING HEARING**

Pursuant to Section 102.16(a)(1), IT IS HEREBY ORDERED that the hearing in the above matter now scheduled for **June 7, 2021**, is rescheduled to **August 23, 2021**, and consecutive days thereafter, at 9:00 a.m., at the Natalie P. Allen Memorial Courtroom, 901 Market Street, Suite 400, San Francisco, California or by any method or means, including videoconference, directed by the Administrative Law Judge.

DATED AT San Francisco, California, this 10<sup>th</sup> day of May, 2021.



Jill H. Coffman, Regional Director  
National Labor Relations Board  
Region 20  
901 Market Street, Suite 400  
San Francisco, California 94103

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
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**20-CA-252957  
20-CA-253105  
20-CA-253464**

**and**

**AMR GABER, an Individual**

**20-CA-253982**

**AFFIDAVIT OF SERVICE OF ORDER RESCHEDULING HEARING**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **May 10, 2021**, I served the above-entitled document(s) by **E-Issuance** upon the following persons, addressed to them at the following addresses:

Sara Kalis, Attorney  
Paul Hastings LLP  
200 Park Avenue  
New York, NY 10166

Al Latham Jr., Attorney  
Paul Hasting LLP  
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Los Angeles, CA 90071-2228

Eric Distelburger, Attorney  
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101 California St Fl 48  
San Francisco, CA 94111-5871

Cameron W. Fox, Attorney  
Paul Hastings, LLP  
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Los Angeles, CA 90071-2228

Michael Pfyl, Director, Legal - Employment  
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Edward Grystar  
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Laurie M. Burgess, Counsel  
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San Francisco, CA 94110-1435

Patricia M. Shea, Esq.  
Communications Workers of America  
(CWA), AFL-CIO  
501 Third St., NW  
6th Floor, Legal Dept.  
Washington, DC 20001

Kyle Singh Dhillon  
1183 Nelrose Avenue  
Venice, CA 90291

Amr Gaber, Union Representative  
1377 Minna Street  
San Francisco, CA 94103

May 10, 2021

Date

Susie Louie, Designated Agent of NLRB

Name

/s/ Susie Louie

Signature

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20

In Re Google, LLC and Alphabet Inc.,	)	Case Nos. 20-CA-252957,
a single employer	)	20-CA-253105, 20-CA-253464

**DISCRIMINATEES/REAL PARTIES IN INTEREST MOTION TO INTERVENE**

NOW COMES Laurie M. Burgess (Burgess) independent counsel for individual 8(a)(1) and 8(a)(3) discriminatees Laurence Berland, Sophie Waldman, Rebecca Rivers and Paul Duke in Case No. 20-CA-252957, independent counsel for individual discriminatee Kathryn Spiers in Case Nos. 20-CA-253105 and 20-CA-253464 and counsel of record for discriminatees Eddie Grystar in Case No. 20-CA-252802 and Kyle Dhillon in Case No. 20-CA-252902, and pursuant to NLRB Regulation 102.9 requests that the Regional Director grant the above real party in interests' request to intervene as of right in these matters. In support of this Motion, the individual discriminatees/real parties in interest state as follows:

**A. Background**

On or about December 5, 2019, Burgess filed charges against Google regarding the termination of employees Laurence Berland, Sophie Waldman, Rebecca Rivers and Paul Duke. Communication Workers of America ("CWA") was listed as "Charging Party" and the charges were docketed as Case No. 20-CA-252957.

On or about December 10, 2019, Burgess filed a charge against Google arising from its conduct of (a) interrogating employee Kathryn Spiers regarding her conduct of creating a "pop up" notice that alerted Googlers to their rights under the NLRA, and (b) subsequently terminating her employment for engaging in such



conduct. These allegations are included in NLRB Charge Nos. 20-CA-253105 and 20-CA-253464. CWA was listed as the "Charging Party" in these cases.

Eddie Grystar and Kyle Dhillon filed charges against Google for discipline they received for their role in the NLRB "pop up" notice matter. Grystar's and Dhillon's charges were filed in their own name and were assigned Case No. 20-CA-252802 and 20-CA-252902 respectively.

After completing its investigation Region 20 issued Complaints alleging that Google unlawfully terminated the employment of Berland and Spiers, unlawfully interrogated Rivers and unlawfully disciplined Dhillon and Grystar. That portion of Charges 20-CA-252802, 20-CA-252902, 20-CA-253105 and 20-CA-253464 alleging that Google unlawfully interrogated Dhillon, Grystar and Spiers regarding their participation in facilitating a mechanism ("Always-Ask-Kent") for employees to send emails to Google's chief legal officer was dismissed. That portion of Charges 20-CA-252957 and 20-CA-253105 alleging that Google unlawfully and disparately applied its "Data Classification policy" to employees who engaged in protected concerted activity was dismissed. Finally, the Region dismissed those Charges alleging that Rivers, Waldman and Duke were unlawfully terminated. The Region concluded that their activities of researching and preparing a petition to challenge Google's involvement in the enforcement of the Trump administration's immigration and border control policies did not involve "terms and conditions of employment" and hence were not protected under Section 7 of the NLRA.

Burgess timely appealed these dismissals. On May 5, 2021 the Acting General Counsel reversed the dismissals and directed that Complaints issue regarding each of these allegations/charges.

**B. CWA Disclaims Interest in Representing the Discriminatees**

While CWA holds the title of “charging party” in the charges involving the termination of Spiers, Berland, Duke, Rivers and Waldman, CWA was not and is not exclusive representative of any Google employees. Indeed, CWA agents have publicly acknowledged that CWA has no intention of serving in this role. See, e.g. <https://www.theverge.com/2021/1/5/22215171/google-alphabet-union-cwa-organizers-goals-explainer>, <https://www.nytimes.com/2021/01/04/technology/google-employees-union.html> Therefore CWA has never had the rights or the duties of an exclusive bargaining relationship with the individual discriminatees.

After the Complaints issued and the dismissal appeal was filed CWA disclaimed interest in supporting the individual discriminatees in prosecuting these cases. CWA has taken the position that providing support for the individual discriminatees is inconsistent with its strategic goals and that the handling of witness preparation, subpoenas, trial examinations, and arguments should be left solely in the hands of the Regional counsel.

The discriminatees believe that it is important for the full development and prosecution of these cases that their counsel continue to represent them in culling evidence, assisting with trial preparation and developing legal theories in support of the Complaints and that it is critically important that she do so for the soon-to-be-

issued amended Complaints pertaining to the terminations of Duke, Waldman and Rivers, whose cases have not been fully developed because their charges were dismissed.

**C. The Discriminatees Request to Intervene to Protect their Rights And Vindicate the Act.**

On May 10, 2021 – three business days after Acting General Counsel’s Decision issued reinstating the charges of Duke, Rivers and Waldman – CWA filed a Notice of Appearance effectively displacing Burgess as counsel in each of the captioned cases and did so without the discriminatees’ knowledge or approval.

The individual discriminatees continue to rely upon Burgess’ extensive knowledge of the cases to develop evidence in support of the soon-to-be newly issued Complaints, to continue preparing the other Complaints for trial, to develop appropriate legal theories and evidence in support thereof, to subpoena documents and witnesses, examine witnesses at trial, prepare trial motions and memoranda, submit post-trial briefing, to zealously represent their interests in any settlement discussions and if necessary, to defend the cases on appeal.

The individual discriminatees are deeply invested in winning (or settling) these cases as doing so provides their only opportunity to be reinstated and obtain backpay from Google. The discriminatees share the NLRB’s interest in ensuring that the Act is vindicated. Thus, their request to intervene not only protects their own interests in these matters but also serves the public interest in ensuring that the NLRB has the continuing assistance of the non-government lawyer who developed the factual and legal theories at issue in these important cases.

For the foregoing reasons Discriminatees Spiers, Grystar, Dhillon<sup>1</sup>, Duke, Berland, Rivers and Waldman request that the Motion to Intervene be GRANTED forthwith.

May 26, 2021

Respectfully submitted,

Paul Duke, Laurence Berland,  
Sophie Waldman, Rebecca Rivers,  
Kathryn Spiers, Eddie Grystar and  
Kyle Dhillon



By:

\_\_\_\_\_  
Laurie M. Burgess  
Their Counsel

Laurie M. Burgess  
Burgess Law Offices  
[lburgess@burgess-laborlaw.com](mailto:lburgess@burgess-laborlaw.com)  
312/320-1718

---

<sup>1</sup> Even though Dhillon and Grystar are the charging parties in their individual cases they support the instant Motion to ensure that the discriminatees in charges that are inextricably connected to theirs receive the benefit of full participation and representation in their cases.

## **NOTICE OF FILING AND CERTIFICATE OF SERVICE**

Please take notice that this 26<sup>th</sup> day of May, 2021, the undersigned e-filed the attached **Discriminatees/Real Parties in Interest Motion to Intervene** with Region 20, a copy of which is hereby served upon you pursuant to NLRB Regulation 11846.4(b).

**Charged Party / Respondent**

Legal Representative

Latham, Al

Paul Hasting LLP

[allatham@paulhastings.com](mailto:allatham@paulhastings.com)

515 South Flower Street

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**Charged Party / Respondent**

Legal Representative

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90071-2228

**Charged Party / Respondent**

Legal Representative

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**Charging Party**

Notification

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**Charging Party**

Notification

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Communication Workers of America, District 9

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90670

**Charging Party**

David Rosenfeld

Legal Representative

Weinberg, Roger & Rosenfeld

[nlrbotices@unioncounsel.net](mailto:nlrbotices@unioncounsel.net)

1001 Marina Village Pkwy

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Alameda, CA

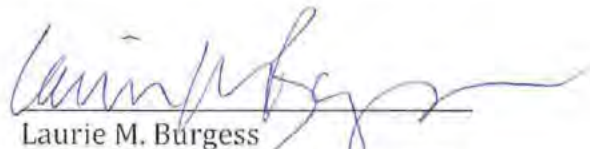
94501



**CERTIFICATE OF SERVICE**

I, Laurie M. Burgess, Burgess Law Offices P.C., certify that this 26<sup>th</sup> day of May, 2021, served a copy of the foregoing **Discriminatees/Real Parties in Interest Motion to Intervene** on the above parties of record, by and through their counsel, by sending a copy of same via email ([lburgess@burgess-laborlaw.com](mailto:lburgess@burgess-laborlaw.com)) to their individual email addresses above.

Dated: May 26, 2021



Laurie M. Burgess  
[lburgess@burgess-laborlaw.com](mailto:lburgess@burgess-laborlaw.com)  
Burgess Law Offices  
498 Utah St.  
San Francisco, CA 94110  
(312) 320-1718

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
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**Cases: 20-CA-252802**

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**20-CA-252902**

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COMMUNICATIONS WORKERS OF AMERICA,  
AFL-CIO, a labor organization

**20-CA-252957**

**20-CA-253105**

**20-CA-253464**

and

AMR GABER, an Individual

**20-CA-253982**

**ORDER TO SHOW CAUSE**

On May 26, 2021, Paul Duke, Laurence Berland, Sophie Waldman, Rebecca Rivers, Kathryn Spiers, Eddie Grystar, and Kyle Dhillon filed a “Discriminatees / Real Parties in Interest Motion to Intervene,” pursuant to the National Labor Relations Board’s Rules and Regulations Section 102.29. Having read the Motion as seeking intervenor-party status for Paul Duke, Laurence Berland, Sophie Waldman, and Rebecca Rivers in Case 20-CA-252957 and for Kathryn Spiers in Cases 20-CA-253105 and 20-CA-253464, all parties are hereby ORDERED to show cause why said Motion should not be granted.

All show cause responses must be served on all parties and electronically filed by the end of business on June 3, 2021.

IT IS SO ORDERED.

Dated this 27<sup>th</sup> of May 2021.

/s/ Daniel J. Owens

---

Daniel J. Owens  
Acting Regional Director  
NLRB Region 20

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and

AMR GABER, an Individual

**20-CA-253982**

**AFFIDAVIT OF SERVICE OF ORDER O SHOW CAUSE**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **May 27, 2021**, I served the above-entitled document(s) by **E-Serve** upon the following persons, addressed to them at the following addresses:

Sara Kalis, Attorney  
Paul Hastings LLP  
200 Park Avenue  
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Laurie M. Burgess, Counsel  
Burgess Law Offices, PC  
498 Utah St  
San Francisco, CA 94110-1435

Patricia M. Shea, Esq.  
Communications Workers of America  
(CWA), AFL-CIO  
501 Third St., NW  
6th Floor, Legal Dept.  
Washington, DC 20001

May 27, 2021

---

Date

Susie Louie, Designated Agent of NLRB

---

Name

/s/ Susie Louie

---

Signature



UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

COMMUNICATIONS WORKERS OF  
AMERICA, AFL-CIO

Charging Party

v.

GOOGLE, LLC and ALPHABET INC., a  
single employer

Charged Party/Respondent

Case Nos. 20-CA-252957, 20-CA-253105,  
20-CA-253464

COMMUNICATIONS WORKERS OF  
AMERICA, AFL-CIO's RESPONSE TO  
DISCRIMINATEES' MOTION TO  
INTERVENE

Communications Workers of America, AFL-CIO, the Charging Party in this matter, hereinafter referred to as "CWA" or "the Charging Party", hereby supports the discriminatees' intervention in this matter and further responds to and clarifies statements in the Discriminatees' Motion to Intervene as follows:

Background

On or about December 5 and 10, 2019, Laurie Burgess, Esq. filed charges against Respondent **in consultation with and on behalf of CWA as the Charging Party**, which were docketed as Cases 20-CA-252957, 20-CA-253105, 20-CA-253464, respectively. At the time, Laurie Burgess, Esq. served as attorney to CWA, under a retainer with her then-firm Messing Adam & Jasmin LLP.

After investigation, Region 20 found merit and issued complaint alleging unlawful terminations of Laurence Berland and Kathryn Spiers, among other allegations, but failed to find merit to the allegations relating to the discharges of Rebecca Rivers, Sophie Waldman and Paul Duke, as well as other allegations. Laurie Burgess, Esq., **in consultation with and on behalf of CWA, the Charging Party**, filed a timely appeal regarding these discharges, which was sustained on

May 5, 2021 with a directive to issue complaint absent settlement.

CWA Has Never Disclaimed Interest in this Matter

In her Motion to Intervene, attorney Burgess claims that “CWA agents have publicly acknowledged that CWA has no intention of serving in [the role of exclusive bargaining representative of Google employees].” She cites two news articles, neither of which quote, reference, or mention a CWA agent disclaiming interest in being the exclusive bargaining representative of a bargaining unit or units that include the discriminatees. Rather, the articles accurately describe the nature of a union that does not yet have voluntary recognition or Board certification. It is unclear why attorney Burgess makes this claim about CWA’s intentions regarding representation status or why such a claim would have any relevance to the Motion to Intervene in any event.

CWA always has been and remains the Charging Party in these cases. CWA has and continues to support protection of these discriminatees’ statutory rights and the Board’s efforts to remedy the violations of those rights. CWA has an interest in ensuring the Act is enforced in this case, not only because the discriminatees’ rights must be vindicated, but because the various unfair labor practices at issue have a chilling effect on thousands of other active Google employees attempting to organize.

CWA has not disclaimed interest in any potential bargaining units at Google, nor has CWA disclaimed interest in supporting these discriminatees. Indeed, CWA’s support for the discriminatees has included deferring to the discriminatees’ wishes for CWA to have the assistance of outside counsel jointly representing CWA and the discriminatees, which was an atypical occurrence as CWA often solely uses its own tried and tested headquarters or district counsel for unfair labor practice investigations. For this reason, CWA signed a retainer agreement with Messing Adam & Jasmine, the firm then-employing attorney Burgess. During the course of the investigatory and appeal process, the invoices from the law firm of this outside counsel for CWA and the discriminatees, which totaled in excess of \$175,000, were remitted to and paid by CWA, i.e., by the dues of hard-

working union members. As the case was entering a new phase, attorney Burgess left the CWA-retained firm and sought to enter a new retainer agreement with CWA, which CWA declined to do. While CWA members' solidarity is limitless, their dollars unfortunately are not. With the investigations and appeals over and the case now in the hands of government lawyers to litigate the merit findings, including the discharges of the aforementioned discriminatees, in a consolidated manner, CWA views it as unnecessary to the effective prosecution of the case -- and an imprudent use of union members' dues -- to continue paying attorney Burgess. Declining to continue to bankroll attorney Burgess after she left the firm with which CWA had a retainer agreement is not a disclaimer of interest in anything other than continuing to empty union coffers to a lawyer whose work, paid for by CWA and supplemented by CWA in-house counsel's advice and labor, is complete as far as CWA is concerned.

The Board process has moved to its next phase, i.e., litigation of all of the unfair labor practice allegations found meritorious by the Region and the Acting General Counsel. CWA is fully engaged with and supportive of the capable board agents in Region 20, who get paid through our taxpayer dollars to fully and successfully litigate this matter to its conclusion for the discriminatees' and the broader public interests.

#### CWA Supports the Discriminatees' Motion to Intervene

CWA filed a Notice of Appearance, which replaced one CWA in-house counsel for another to ensure timely notifications and communications about the cases, and advised the discriminatees that it was fully supportive of any motion to intervene that they may choose to file. As a staunch worker advocate for hundreds of thousands of workers in this country, CWA wants the discriminatees to be active participants and to have a voice in matters affecting their livelihood, which is consistent with CWA actions taken in other cases.

CWA is deeply vested in a successful outcome for the discriminatees and their co-workers. The dispute between the discriminatees and CWA appears to be one of who is going to vindicate

their statutory rights. CWA has faith that Regional board agents, who are long-tenured, highly experienced, and very well-steeped in the law and the Board's processes, will do an outstanding job without the assistance of outside counsel, Laurie Burgess, Esq. The movants appear to believe otherwise and no one is preventing them from paying Laurie Burgess, Esq. for her services.

Conclusion

In sum, intervention should be granted.<sup>1</sup>

Dated: May 28, 2021

By: Patricia M. Shea  
PATRICIA M. SHEA

Attorney for the Charging Party,  
Communications Workers of America, AFL-CIO

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<sup>1</sup> By filing this response and supporting the discriminatees' motion to intervene, CWA is not waiving any actions or claims it has or may have against Laurie Burgess, Esq. or her former or current law firm based on her representation of CWA in this matter.

## **NOTICE OF FILING AND CERTIFICATE OF SERVICE**

Please take notice that this 28<sup>th</sup> day of May 2021, the undersigned e-filed the attached **Communications Workers of America, AFL-CIO's Response to Discriminatees' Motion to Intervene** with Region 20, a copy of which is hereby served upon the following parties, via e-mail, pursuant to NLRB Regulation 11846.4(b).

### **Charged Party/Respondent**

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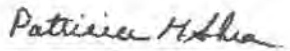
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Dated: May 28, 2021

  
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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20**

GOOGLE, LLC and ALPHABET INC., a single  
employer

and

EDWARD GRYSTAR, an Individual

**Cases 20-CA-252802**

and

KYLE DHILLON, an Individual

**20-CA-252902**

and

COMMUNICATIONS WORKERS OF AMERICA,  
AFL-CIO

**20-CA-252957  
20-CA-253105  
20-CA-253464**

and

AMR GABER, an Individual

**20-CA-253982**

**SECOND AMENDED COMPLAINT AND NOTICE OF HEARING**

Edward Grystar (Grystar), Kyle Dhillon (Dhillon), the Communications Workers of America, AFL-CIO (Union), and Amr Gaber (Gaber) (collectively, Charging Parties) have charged that Google, LLC (Google) and Alphabet Inc. (Alphabet), a single employer (Respondent), has been engaging in unfair labor practices affecting commerce as set forth in the National Labor Relations Act, 29 U.S.C., Sec. 151, et seq., (the Act), and a Complaint and Notice of Hearing issued based on those charges on December 2, 2020. The Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.17 of the Board's Rules and



Regulations, now issues this Second Amended Complaint and Notice of Hearing and alleges as follows:

1. (a) The charge in Case 20-CA-252802 was filed by Grystar against Google, LLC on December 3, 2019, and a copy was served on Google by U.S. mail on December 4, 2019.

(b) A first-amended charge in Case 20-CA-252802 was filed by Grystar against Google, LLC on December 1, 2020, and a copy was served on Google by U.S. mail on December 2, 2020.

(c) The charge in Case 20-CA-252902 was filed by Dhillon against Google, LLC on December 5, 2019, and a copy was served on Google by U.S. mail on December 6, 2019.

(d) A first-amended charge in Case 20-CA-252902 was filed by Dhillon against Google, LLC on December 1, 2020, and a copy was served on Google by U.S. mail on December 2, 2020.

(e) The charge in Case 20-CA-252957 was filed by the Union on December 5, 2019, and a copy was served on Respondent by U.S. mail on December 6, 2019.

(f) A first-amended charge was filed in Case 20-CA-252957 by the Union on March 9, 2020, and a copy was served on Respondent by U.S. mail on March 10, 2020.

(g) The charge in Case 20-CA-253105 was filed by the Union on December 9, 2019, and a copy was served on Respondent by U.S. mail on December 10, 2019.

(h) The charge in Case 20-CA-253464 was filed by the Union on December 16, 2019, and a copy was served on Respondent by U.S. mail on December 17, 2019.

(i) The charge in Case 20-CA-253982 was filed by Gaber on December 30, 2019, and a copy was served on Respondent by U.S. mail on December 31, 2019.

2. (a) At all material times, Google, a California limited liability company with offices and places of business in Mountain View, California, New York, New York, and elsewhere, is a technology company specializing in a search-engine and other internet-related services and products.

(b) During the twelve-month period ending October 31, 2020, Google, in conducting its business operations described above in subparagraph 2(a), derived gross revenues in excess of \$500,000.

(c) During the period of time described above in subparagraph 2(b), Google, in conducting its business operations described above in subparagraph 2(a), purchased and received at its Mountain View, California, office and place of business, goods valued in excess of \$5,000 directly from points outside the State of California.

3. (a) At all material times, Alphabet, a California corporation with its headquarter office and place of business located in Mountain View, California, is a technology conglomerate and parent holding company of Google, Waymo, and other subsidiaries.

(b) During the twelve-month period ending October 31, 2020, Alphabet, in conducting its business operations described above in subparagraph 3(a), derived gross revenues in excess of \$500,000.

(c) During the period of time described above in subparagraph 3(b), Alphabet, in conducting its business operations described above in subparagraph 3(a), purchased and received at its Mountain View, California, office and place of business, goods valued in excess of \$5,000 directly from points outside the State of California

4. (a) At all material times, Google and Alphabet have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have

formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have interrelated operations with common insurance and purchasing and sales; and have held themselves out to the public as a single-integrated business enterprise.

(b) Based on its operations described above in subparagraph 4(a), Google and Alphabet constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

5. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

6. (a) For the time periods specified herein, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act:

¶	Individual	Position	Time Period
i.	Adrian Crowther	Director, People Programs	From at least September 1, 2019 through at least December 31, 2019.
ii.	Lynne Williams	People Programs Manager	From at least September 1, 2019 through at least December 31, 2019.
iii.	Tim Swanson	Senior Software Engineer	November 2019
iv.	Jered Wierbickisky	Staff Supervisor	From November 1, 2019 to December 31, 2019.
iv.	Ben Johns	Software Engineer	From November 1, 2019 to December 31, 2019.

v.	Jeff Gilbert	Principal Software Engineer	From November 1, 2019 to December 31, 2019.
vi.	Carter Gibson	Community Moderation Manager	From at least July 1, 2019 to December 31, 2019.

(b) For the time periods specified herein, the following individuals held the positions set forth opposite their respective names and have been agents of the Respondent within the meaning of Section 2(13) of the Act:

¶	Individual	Position	Time Period
i.	Brad Fuller	Safety & Security Specialist	From September 1, 2019 to December 31, 2019.
ii.	Traci Cravitz	Safety & Security Specialist	From November 1, 2019 to December 31, 2019.
iii.	Steven King	Director, Safety & Security	From November 1, 2019 to December 31, 2019.
iv.	Charles Leynes	Safety & Security Specialist	November 2019
v.	Heather Adkins	Security Engineer Director	From November 1, 2019 to December 31, 2019.
vi.	Chris Rackow	VP G&A	November 2019
vii.	Royal Hansen	Vice President, Engineering	November 2019
viii.	Mikayla Cameron	People Partner	November 2019

ix.	Kibra Yemane	People Consultant	From November 1, 2019 to December 31, 2019.
x.	Unnamed Agent #1		From November 1, 2019 to December 31, 2019.
xi.	Unnamed Agent #2		From at least May 1, 2019 through at least December 31, 2019.
xii.	Unnamed Agent #3		From November 1, 2019 to December 31, 2019.
xiii.	Unnamed Agent #4		September 2019
ix.	Nicole Kuzdiba	Human Resources Representative	From November 1, 2019 to December 31, 2019.
x.	Aleks Kagramanov	Safety & Security Specialist	From at least September 1, 2019 to at least December 31, 2019.
xi.	Sundar Pichai	Chief executive Officer	From at least January 1, 2017 to at least December 31, 2019.
xii.	Sergey Brin	President	From at least January 1, 2017 to at least December 3, 2019.

7. About September 3, 2019, and at various times thereafter, Respondent, by Adrian Crowther and Lynne Williams, virtually surveilled employees protected concerted activities by, on numerous occasions, viewing an employee slide production in support of the HCL union drive. (Case 20-CA-253982)

8. About November 8, 2019, Respondent, by Brad Fuller and Traci Cravitz, interrogated its employees about their protected concerted activities by asking them about accessing MemeGen Takedown Documents. (Case 20-CA-252957)

9. About November 13, 2019, Respondent, by Charles Leynes and Traci Cravitz, in a Global Investigations meeting in Respondent's San Francisco facility, interrogated its employees about their protected concerted activities by asking them about their access of employees' calendars and MemeGen Takedown Documents. (Cases 20-CA-252957, 20-CA-253105, 20-CA-253464).

10. (a) On November 27, 2019, Respondent, by Steven King, interrogated its employees about their protected concerted activities by asking them about their creation of a Google Form that expressed concerns about Respondent's enforcement of its Need-to-Know Policy to Unnamed Agent # 2. (Case 20-CA-25802).

(b) On December 9, 2019, Respondent, by Traci Cravtiz, interrogated its employees about their protected concerted activities by asking them about their creation of the Google Form described in subparagraph 10(a), about their suspected creation of a Moma badge related to the emails sent by the Google Form described in subparagraph 10(a), and about their involvement in organizing groups with other employees. (Case 20-CA-25802).

11. On December 5 and 6, 2019, Respondent, by Unnamed Agent #3, interrogated its employees about their protected concerted activities by asking them about their creation of a chrome extension that sent emails expressing concerns about Respondent's enforcement of its Need-to-Know Policy to Unnamed Agent # 2. (Cases 20-CA-253105, 20-CA-253464).

12. On December 9, 2019, Respondent, by Traci Cravtiz, interrogated its employees about their protected concerted activities by asking them about their creation of a chrome extension

that sent emails expressing concerns about Respondent's enforcement of its Need-to-Know Policy to Unnamed Agent # 2. (Case 20-CA-252902).

13. About December 18, 2019, Respondent, by Unnamed Agent #1, in a meeting which included Supervisors Jered Wierbickisky, Director of Detection and Response Heather Adkins, and Manager Kibra Yemane, threatened employees with unspecified reprisals by requiring employees to raise workplace concerns through official channels including Code of Conduct alias or go/my-concerns. (Case 20-CA-252802).

14. (a) At all material times, Respondent has maintained Data Classification Policies pertaining to accessing Need-to-Know documents.

(b) Since about November 2019, Respondent, by Traci Cravitz and Charles Leynes, enforced the rule described above in subparagraph 14(a) selectively and disparately by applying it only against employees who engaged in protected, concerted activities. (Case 20-CA-252957).

15. (a) About November 2019, Respondent, by email, promulgated and has since then maintained a Calendar Access rule prohibiting employees from accessing other employees' calendars without a business purpose.

(b) Respondent promulgated and maintained the rule described above in subparagraph 15(a) to discourage its employees from forming, joining, assisting a union or engaging in other protected, concerted activities. (Case 20-CA-252957)

16. (a) About October 2019, Respondent promulgated and has since then maintained a Calendar Event rule prohibiting employees from creating calendar events with more than 100 invitees or using more than 10 rooms without a business purpose.

(b) Respondent promulgated and maintained the rule described above in subparagraph 16(a) to discourage its employees from forming, joining, assisting a union or engaging in other protected, concerted activities. (Case 20-CA-252957)

17. (a) Around July 2019, employees Paul Duke, Sophia Waldman engaged in concerted activities with other employees for the purposes of mutual aid and protection by discussing concerns about a public document showing that U.S. Customs and Border Control requested information from Respondent about its cloud computing services, including whether employees' work might be used for the potential project.

(b) Around July 2019 employee Paul Duke engaged in concerted activities with other employees for the purposes of mutual aid and protection by accessing employee accessible documents related to the Respondent's relationship with U.S. Customs and Border Control.

(c) On August 14, 2019 employees Paul Duke and Sophia Waldman engaged in concerted activities with other employees for the purposes of mutual aid and protection by disseminating a petition protesting Respondent's relationship with U.S. Customs and Border Control.

(d) Between August 14, 2019 and August 19, 2019 employees Rebecca Rivers, Paul Duke, and Sophia Waldman engaged in concerted activities with other employees for the purposes of mutual aid and protection by accessing employee accessible documents related to the Respondent's relationship with U.S. Customs and Border Control.

(e) On August 19, 2019, Sophia Waldman engaged in concerted activities with other employees for the purposes of mutual aid and protection by publishing an internal document linking to some of the documents described in subparagraph 17(d).



(f) Around September 2019, employees Paul Duke and Sophia Waldman engaged in concerted activities with other employees for the purposes of mutual aid and protection by discussing concerns about Respondent's relationship with the software company Palantir.

(g) Around September 2019, employees Rebecca Rivers, Paul Duke, and Sophia Waldman engaged in concerted activities with other employees for the purposes of mutual aid and protection by accessing employee accessible documents related to the Respondent's relationship with Palantir.

(h) On September 24, 2019, Sophia Waldman and Paul Duke engaged in concerted activities with other employees for the purposes of mutual aid and protection by publishing an internal document linking to some of the documents described in subparagraph 17(g).

(i) On November 25, 2019, Respondent terminated the employment of Rebecca Rivers, Paul Duke, and Sophia Waldman.

(j) Respondent engaged in the conduct described above in subparagraph 17(i) because Rebecca Rivers, Paul Duke, and Sophia Waldman engaged in the conduct described above in subparagraphs 17(a)-17(h), and to discourage employees from engaging in these or other concerted activities.

18. (a) About October 2019, employees Rebecca Rivers and Laurence Berland engaged in concerted activities with other employees for the purposes of mutual aid and protection by posting workplace concerns on MemeGen.

(b) About early November 2019, Rivers and Berland accessed employee accessible calendars and documents regarding the MemeGen Takedown Process.

(c) About November 6, 2019, Respondent placed Berland on administrative leave for accessing calendars and documents regarding the MemeGen Takedown Process.

(d) About November 7, 2019, Respondent placed Rivers on administrative leave for accessing documents regarding the MemeGen Takedown Process.

(e) About November 25, 2019, Respondent terminated the employment of Rivers and Berland.

(f) Respondent engaged in the conduct described above in subparagraphs 18(c), (d), and (e) because Rivers and Berland engaged in the conduct described above in subparagraphs 18(a) and (b) and to discourage employees from engaging in these or other concerted activities. (Case 20-CA-252957)

19. (a) On November 18, 2019, Respondent's employee Eddie Grystar concertedly complained to Respondent regarding the wages, hours, and working conditions of Respondent's employees, by emailing employees concerns about Respondent's enforcement of its Need-to-Know policy and creating a Google Form for other employees to express the same concerns to Unnamed Agent #2.

(b) On November 18, 2019, Respondent's employees Kyle Dhillon and Kathryn Spiers engaged in concerted activities with each other for the purposes of mutual aid and protection, by creating and sharing a Google Document titled, "'Need to Know' Self-Reporter DD," which expressed concerns about Respondent's enforcement of its Need-to-Know policy.

(c) On November 21, 2019, Respondent's employees Kyle Dhillon and Kathryn Spiers concertedly complained to Respondent regarding the wages, hours, and working conditions of Respondent's employees, by creating a chrome extension that sent emails expressing concerns about Respondent's enforcement of its Need-to-Know Policy to Unnamed Agent # 2.

(d) Around November 20, 2019, Respondent's employee Eddie Grystar engaged in concerted activities with other employees for the purposes of mutual aid and protection by organizing a November 22, 2019, protest at the Employer's San Francisco facility to express concern about the Employer's placement of other employees on administrative leave.

(e) About November 23, 2019, employee Kathryn Spiers began writing code for a pop-up featuring an NLRB Notice from Case 32-CA-176462 that would automatically appear when an employee visited Respondent's Community Guidelines and other web pages.

(f) About November 24, 2019, Respondent's employee Kyle Dhillon performed a code review for the code referenced above in subparagraph 19(e).

(g) About November 25, 2019, Respondent's employee Edward Grystar performed a readability review for the code referenced above in subparagraph 19(e).

(h) About November 25, 2019, Respondent placed Kathryn Spiers on Administrative Leave. (Cases 20-CA-253105 and 20-CA-253464)

(i) About November 26, 2019, Respondent turned off employee Kyle Dhillon's cell phone service. (Case 20-CA-252902)

(j) About November 27, 2019, Respondent placed employees Kyle Dhillon and Edward Grystar on administrative leave. (Cases 20-CA-252802 and 20-CA-252902)

(k) About December 18, 2019, Respondent issued employee Kyle Dhillon a final written warning. (Case 20-CA-252902)

(l) About December 19, 2019, Respondent counseled Edward Grystar and placed him on a 6-month monitoring of his readability and LGTM reviews. (Case 20-CA-252802)

(m) About December 13, 2019, Respondent terminated the employment of Kathryn Spiers. (Case 20-CA-253464)

(n) Respondent engaged in the conduct described above in subparagraphs 19(i) through 19(l) because Dhillon and Grystar engaged in the conduct described above in subparagraphs 19 (a)-(d), (f) and (g) and to discourage employees from engaging in these or other concerted activities. (Cases 20-CA-252802 and 20-CA-252902).

(o) Respondent engaged in the conduct described above in subparagraphs 19(h) and (m) because Spiers engaged in the conduct described above in subparagraphs 19(b), (c), and (e) and to discourage employees from engaging in these or other concerted activities. (Case 20-CA-253464).

20. By the conduct described above in paragraphs 7 through 19, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

21. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Second Amended Complaint. The answer must be **received by this office on or before June 23, 2021**. Respondent also must serve a copy of the answer on each of the other parties.

The answer must be filed electronically through the Agency's website. To file electronically, go to [www.nlrb.gov](http://www.nlrb.gov), click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to

receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission.

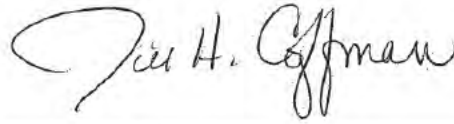
If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Second Amended Complaint are true.

### **HEARING**

As previously ordered, on **August 23, 2021, at 9:00 a.m.**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board at 901 Market Street, Suite 400, San Francisco, California, or method or means, including videoconference, directed by the Administrative Law Judge. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Second Amended Complaint. The procedures to be

followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: June 9, 2021



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JILL H. COFFMAN  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 20  
901 Market Street, Suite 400  
San Francisco, CA 94103-1738

Attachments

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**NOTICE**

Cases 20-CA-252802, 20-CA-252902, 20-CA-252957, 20-CA-253105, 20-CA-253464  
and 20-CA-253982

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

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- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
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Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Eileen Naughton  
Google Inc.  
345 Spear Street  
San Francisco, CA 94105

Eileen Naughton  
Google Inc.  
1600 Amphitheater Parkway  
Mountain View, CA 94043

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Kyle Singh Dhillon  
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Jennifer Abruzzo  
Communications Workers of America  
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501 Third St NW, Ste 800  
Washington, DC 20001-2797

Amr Gaber  
1377 Minna Street  
San Francisco, CA 94103



## Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules\\_and\\_regs\\_part\\_102.pdf](http://www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at [www.nlrb.gov](http://www.nlrb.gov), click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

**Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement.** The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

### I. BEFORE THE HEARING

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- ! **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

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The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- ! **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
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of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

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- ! **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

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- ! **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- ! **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20**

**GOOGLE, LLC AND ALPHABET INC., A  
SINGLE EMPLOYER**

**and**

**COMMUNICATIONS WORKERS OF AMERICA,  
AFL-CIO AND AFL-CIO LAWYERS  
COORDINATING COMMITTEE, EDWARD  
GRYSTAR, KYLE SINGH DHILLON AND AMR  
GABER**

**Case 20-CA-252802; 20-CA-  
252902; 20-CA-252957; 20-  
CA-253105; 20-CA-253464;  
20-CA-253982**

**AFFIDAVIT OF SERVICE OF: Complaint and Notice of Hearing (with forms NLRB-4338 and NLRB-4668 attached)**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on June 9, 2021, I served the above-entitled document(s) by **e-issue**, as noted below, upon the following persons, addressed to them at the following addresses:

Sara Kalis , Attorney  
Paul Hastings LLP  
200 Park Avenue  
New York, NY 10166

**E-ISSUED**

Al Latham JR., Attorney  
Paul Hasting LLP  
515 South Flower Street  
25th Floor  
Los Angeles, CA 90071-2228

**E-ISSUED**

Eric Distelburger , Attorney  
Paul Hastings LLP  
101 California St Fl 48  
San Francisco, CA 94111-5871

**E-ISSUED**

Cameron W. Fox , Attorney  
Paul Hastings, LLP  
515 South Flower Street  
25th Floor  
Los Angeles, CA 90071-2228

**E-ISSUED**

Michael Pfyl , Director, Legal - Employment      **E-ISSUED**  
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Edward Grystar      **E-ISSUED**  
519 66th Street  
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Oakland, CA 94609

Laurie M. Burgess , Counsel      **E-ISSUED**  
Burgess Law Offices, PC  
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San Francisco, CA 94110-1435

Kyle Singh Dhillon      **E-ISSUED**  
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Venice, CA 90291

Patricia M. Shea , ESQ.      **E-ISSUED**  
Communications Workers of America  
(CWA), AFL-CIO  
501 Third St., NW  
6th Floor, Legal Dept.  
Washington, DC 20001

Amr Gaber , Union Representative      **E-ISSUED**  
1377 Minna Street  
San Francisco, CA 94103

June 9, 2021

Date

Donna Gentry, Designated Agent of NLRB

Name

*/s/ Donna Gentry*

Signature

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**NOTICE**

Case 20-CA-252802

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

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Washington, DC 20001-2797

Amr Gaber , Union Representative  
1377 Minna Street  
San Francisco, CA 94103

## Procedures in NLRB Unfair Labor Practice Hearings

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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20**

GOOGLE, LLC and ALPHABET INC., a single  
employer

and

EDWARD GRYSTAR, an Individual

**Cases 20-CA-252802**

and

KYLE DHILLON, an Individual

**20-CA-252902**

and

COMMUNICATIONS WORKERS OF AMERICA,  
AFL-CIO

**20-CA-252957  
20-CA-253105  
20-CA-253464**

and

AMR GABER, an Individual

**20-CA-253982**

and

KATHRYN SPIERS, Intervenor  
(in 20-CA-253105 and 20-CA-253464)

and

LAURENCE BERLAND, Intervenor  
(in 20-CA-252957)

and

SOPHIE WALDMAN, Intervenor  
(in 20-CA-252957)

and

PAUL DUKE, Intervenor  
(in 20-CA-252957)

and

REBECCA RIVERS, Intervenor  
(in 20-CA-252957)

### **ORDER GRANTING MOTION TO INTERVENE**

On May 26, 2021, Paul Duke, Laurence Berland, Sophie Waldman, Rebecca Rivers, Kathryn Spiers, Eddie Grystar, and Kyle Dhillon filed a “Discriminatees / Real Parties in Interest Motion to Intervene,” pursuant to the National Labor Relations Board’s Rules and Regulations Section 102.29. The Acting Regional Director thereafter issued an Order to Show Cause why the Motion should not be granted. Charging Party Communications Workers of America and Respondent Google, LLC filed responses.

Having duly considered the Motion and the responding parties’ positions, I conclude that the requested intervention is “proper” under Section 102.29. *See also, e.g., Lincoln Technical Institute, Inc.*, 256 NLRB 176, 176 (1981). I therefore GRANT the Motion to Intervene.

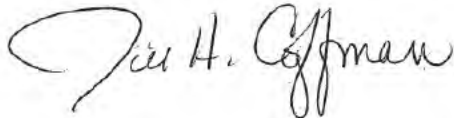
Contrary to Respondent’s position, the fact that a current party may possess rights potentially duplicative of the rights now being afforded Intervenors does not preclude intervention or, more dubiously, require limiting the rights of a party. Respondent cites no cases, and I am aware of none, in which a Regional Director granted intervention rights on the condition that a charging party’s corresponding rights be reduced or eliminated. *Cf.* Bd. R. & Reg. § 102.38 (“Any party has the right to appear at the hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record documentary or other evidence, *except that the Administrative Law Judge may limit the participation of any party as appropriate.*”) (emphasis added). Indeed, should issues arise in the pre-litigation or litigation phases of these matters regarding duplication or unnecessary protraction, the Administrative Law

Order Granting Motion to Intervene

Judge assigned to the matter is in position to place limitations on the parties as s/he sees fit. *See Id.*; *see also* Fed. R. Evid. § 403.

IT IS SO ORDERED.

Dated this 15th of June 2021.

A handwritten signature in black ink, reading "Jill H. Coffman". The signature is written in a cursive style with a large, looping initial "J".

---

Jill Coffman  
Regional Director  
NLRB Region 20

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20**

**GOOGLE, LLC AND ALPHABET INC., A  
SINGLE EMPLOYER**

**and**

**COMMUNICATIONS WORKERS OF AMERICA,  
AFL-CIO AND AFL-CIO LAWYERS  
COORDINATING COMMITTEE, EDWARD  
GRYSTAR, KYLE SINGH DHILLON AND AMR  
GABER**

**Case 20-CA-252802; 20-CA-  
252902; 20-CA-252957; 20-  
CA-253105; 20-CA-253249;  
20-CA-253464; 20-CA-  
253982**

**AFFIDAVIT OF SERVICE OF ORDER GRANTING MOTION TO INTERVENE**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **June 15, 2021**, I served the above-entitled document(s) by **electronic or regular mail** upon the following persons, addressed to them at the following addresses:

Sara Kalis , Attorney  
Paul Hastings LLP  
200 Park Avenue  
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sarakalis@paulhastings.com

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Rebecca Rivers  
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Longmont, CO 80503

Kathryn Spiers  
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San Francisco, CA 94103  
kspiers@live.com

Amr Gaber, Union Representative  
1377 Minna Street  
San Francisco, CA 94103

June 15, 2021

Date

Donna Gentry, Designated Agent of NLRB

Name

*/s/ Donna Gentry*

Signature

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20**

---

GOOGLE, LLC and ALPHABET INC., a single employer,

Respondents,

and

EDWARD GRYSTAR, an Individual,

Case Nos.: 20-CA-252802

Charging Party,

and

KYLE DHILLON, an Individual,

20-CA-252902

Charging Party,

and

COMMUNICATION WORKERS OF AMERICA, AFL-CIO,

20-CA-252957

20-CA-253105

Charging Party,

20-CA-253464

and

AMR GABER, an Individual,

20-CA-253982

Charging Party.

---

**ANSWER TO SECOND AMENDED COMPLAINT**

---

Google, LLC and Alphabet, Inc. (collectively “Respondents”), answer the allegations in the Second Amended Complaint (“Second Amended Complaint”) dated February 11, 2021, and assert their Affirmative Defenses, as follows:

1. In answering paragraph 1 of the Second Amended Complaint:

(a) Admit;

- (b) Admit;
- (c) Admit;
- (d) Admit;
- (e) Admit;
- (f) Admit;
- (g) Admit;
- (h) Admit;
- (i) Admit.

2. In answering paragraph 2 of the Second Amended Complaint:

- (a) Admit;
- (b) Admit;
- (c) Admit.

3. In answering paragraph 3 of the Second Amended Complaint:

- (a) Admit;
- (b) Admit;
- (c) Admit.

4. In answering paragraph 4 of the Second Amended Complaint:

- (a) Admit that, for the purposes of this Second Amended Complaint, Respondents are a single employer. Except as expressly admitted, deny;
- (b) Admit that, for the purposes of this Second Amended Complaint, Respondents are a single employer. Except as expressly admitted, deny.

5. Admit.

6. (a) In answering paragraph 6(a) of the Second Amended Complaint:



- (i) Admit that Adrian Crowther was a supervisor within the meaning of Section 2(11) of the Act, in or around September 1, 2019 through October 14, 2019, when she held the position of Director, People Technology and Operations, and in or around October 15 through December 31, 2019, when she held the job title of Director, People Programs (incorrectly identified as holding this position since September 1, 2019 in the Second Amended Complaint);
- (ii) Admit that Lynne Williams was a supervisor within the meaning of Section 2(11) of the Act, in or around September 1, 2019 through October 14, 2019, when she held the job title of Manager – Operations, and in or around December 31, 2019, when she held the job title of People Programs Manager (incorrectly identified as holding this position since September 1, 2019 in the Second Amended Complaint);
- (iii) Admit that Tim Swanson was a supervisor within the meaning of Section 2(11) of the Act, in or around November 2019, when he held the job title of Senior Software Engineer;
- (iv) Admit that Jered Wierbickisky was a supervisor within the meaning of Section 2(11) of the Act, in or around November 1, 2019 through December 31, 2019, when he held the job title of Staff Software Engineer;

- (v) Admit that Ben Johns was a supervisor within the meaning of Section 2(11) of the Act, in or around November 1, 2019 through December 31, 2019, when he held the job title of Software Engineer;
  - (vi) Admit that Jeff Gilbert was a supervisor within the meaning of Section 2(11) of the Act, in or around November 1, 2019 through December 31, 2019, when he held the job title of Principal Software Engineer;
  - (vii) Admit that Carter Gibson was a supervisor within the meaning of Section 2(11) of the Act, in or around July 1, 2019 to December 31, 2019, when he held the job title of Program Manager (incorrectly identified as Community Moderation Manager in the Second Amended Complaint).
- (b) In answering paragraph 6(b) of the Second Amended Complaint:
- (i) Admit that Brad Fuller was an agent within the meaning of Section 2(13) of the Act in or around September 1, 2019 through October 15, 2019 when he held the job title of Investigator and in or around October 16, 2019 through December 31, 2019, when he held the job title of Safety & Security Specialist (incorrectly identified as holding this position since September 1, 2019 in the Second Amended Complaint);
  - (ii) Admit that Traci Cravitz was an agent within the meaning of Section 2(13) of the Act in or around November 1, 2019 through December 31, 2019, when she held the job title of Safety & Security Specialist;

- (iii) Admit that Stephen King was an agent within the meaning of Section 2(13) of the Act in or around November 1, 2019 through December 31, 2019, when he held the job title of Director, Security & Safety;
- (iv) Admit that Charles Leynes was an agent within the meaning of Section 2(13) of the Act in or around November 2019, when he held the job title of Safety & Security Specialist;
- (v) Admit that Heather Adkins was an agent within the meaning of Section 2(13) of the Act in or around November 1, 2019 through December 31, 2019, when she held the job title of Security Engineer Director;
- (vi) Admit that Chris Rackow was an agent within the meaning of Section 2(13) of the Act in or around November 2019, when he held the job title of VP G&A;
- (vii) Admit that Royal Hansen was an agent within the meaning of Section 2(13) of the Act in or around November 2019, when he held the job title of Vice President, Engineering;
- (viii) Admit that Mikayla Cameron was an agent within the meaning of Section 2(13) of the Act in or around November 2019, when she held the job title of People Partner;
- (ix) Admit that Unnamed Agent # 1 was an agent within the meaning of Section 2(13) of the Act in or around November 1, 2019 through December 31, 2019, when he held the job title of Senior Counsel,

Ethics and Compliance (incorrectly identified as Senior Counsel in the Second Amended Complaint);

- (x) Admit that Unnamed Agent # 2 was an agent within the meaning of Section 2(13) of the Act in or around May 1, 2019 through December 31, 2019, when he held the job title of Senior Vice President, Global Affairs & Chief Legal Officer (incorrectly identified as SVP, Legal in the Second Amended Complaint);
- (xi) Admit that Unnamed Agent #3 was an agent within the meaning of Section 2(13) of the Act in or around November 1, 2019 through December 15, 2019, when she held the job title of Discovery Staff Attorney, and in or around December 16, 2019 through December 31, 2019 when she held the position of Associate Corporate Counsel, Ethics & Compliance Investigations (incorrectly identified as Attorney in the Second Amended Complaint);
- (xii) Admit that Unnamed Agent #4 was an agent within the meaning of Section 2(13) of the Act in or around September 2019, when she held the job title of Vice President – Employment Legal ((incorrectly identified as Vice President – Legal Department in the Second Amended Complaint);
- (xiii) Admit that Nicole Kuzdeba (misspelled in the Second Amended Complaint as Kuzdiba) was an agent within the meaning of Section 2(13) of the Act in or around November 1, 2019 through December 31, 2019, when she held the job title of People Partner (incorrectly

identified as Human Resources Representative in the Second Amended Complaint);

(xiv) Admit that Aleks Kagramanov was an agent within the meaning of Section 2(13) of the Act in or around September 1, 2019 through October 14, 2019, when he held the job title of HR Business Partner, in or around October 15, 2019, when he held the job title of Investigator, and in or around October 16, 2019 through December 31, 2019, when he held the job title of Safety & Security Manager (incorrectly identified as Safety & Security Specialist in the Second Amended Complaint);

(xv) Admit that Sundar Pichai was an agent within the meaning of Section 2(13) of the Act in or around January 1, 2017 through December 31, 2019, when he held the job title of Chief Executive Officer; and

(xvi) Admit that Sergey Brin was an agent within the meaning of Section 2(13) of the Act in or around January 1, 2017 through December 31, 2019, when he held the job title of President, Technology (incorrectly identified as President in the Second Amended Complaint).

7. Deny.

8. Deny.

9. Admit that on or about November 13, 2019, Charles Leynes and Traci Cravitz asked an employee questions about “access of employees’ calendars and MemeGen Takedown Documents.” Except as expressly admitted, deny.

10. In answering paragraph 10 of the Second Amended Complaint:

- (a) Deny;
- (b) Deny.

11. Deny.

12. Deny.

13. Deny.

14. In answering paragraph 14 of the Second Amended Complaint:

- (a) Admit;
- (b) Deny.

15. In answering paragraph 15 of the Second Amended Complaint:

- (a) Deny;
- (b) Deny.

16. In answering paragraph 16 of the Second Amended Complaint, Respondents state that:

- (a) Deny;
- (b) Deny.

17. In answering paragraph 17 of the Second Amended Complaint, Respondents state that:

- (a) Deny;

- (b) Admit Duke accessed documents related to Respondent's relationship with U.S. Customs and Border Control. Except as expressly admitted, deny;
- (c) Deny;
- (d) Admit Rivers, Duke, and Waldman accessed documents related to Respondent's relationship with U.S. Customs and Border Control. Except as expressly admitted, deny;
- (e) Admit Waldman published an internal document linking to some of the documents described in subparagraph 17(d). Except as expressly admitted, deny;
- (f) Deny;
- (g) Admit Rivers, Duke, and Waldman accessed documents related to Respondent's relationship with Palantir. Except as expressly admitted, deny;
- (h) Admit Waldman and Duke published an internal document linking to some of the documents described in subparagraph 17(g). Except as expressly admitted, deny;
- (i) Admit;
- (j) Deny.

18. In answering paragraph 18 of the Second Amended Complaint, Respondents state that:

- (a) Deny;

- (b) Admit Berland “accessed employee accessible calendars.” Further admit Berland accessed “documents regarding the MemeGen Takedown Process.” Except as expressly admitted, deny;
- (c) Admit Berland was “placed on administrative leave.” Except as expressly admitted, deny;
- (d) Admit Rivers was “placed on administrative leave.” Except as expressly admitted, deny;
- (e) Admit;
- (f) Deny.

19. In answering paragraph 19 of the Second Amended Complaint, Respondents state that:

- (a) Deny;
- (b) Deny;
- (c) Deny;
- (d) Deny;
- (e) Admit Kathryn Spiers wrote “code for a pop-up featuring an NLRB Notice from Case 32-CA-176462 that would automatically appear when an employee visited Respondent’s Community Guidelines and other web pages.” Except as expressly admitted, deny;
- (f) Admit;
- (g) Admit;
- (h) Admit;
- (i) Admit;



- (j) Admit;
  - (k) Admit;
  - (l) Admit;
  - (m) Admit;
  - (n) Deny;
  - (o) Deny.
20. Deny.
21. Deny.

### **AFFIRMATIVE DEFENSES**

1. The employees' conduct alleged in the Second Amended Complaint was not protected by the Act and, even if it was, the conduct lost any protection it might have otherwise had under the Act.

2. The discipline alleged in the Second Amended Complaint was warranted by violations of Respondents' policies, such as Google's Code of Conduct and Standards of Conduct policies, the validity of which are not at issue.

3. Respondents acted lawfully to maintain a work environment that is free of unlawful discrimination, harassment and bias.

4. Respondents deny any discipline alleged in the Second Amended Complaint was in whole or in part for protected conduct, but the same discipline would have been imposed even in the absence of protected conduct, and was based on legitimate business reasons and not discriminatory or retaliatory animus.

**WHEREFORE**, Respondents respectfully request the following relief:

1. Judgment be entered dismissing the Second Amended Complaint on the merits and with prejudice in its entirety; and
2. Directing such other relief as the Board deems just and equitable.

DATED: June 23, 2021

Respectfully submitted,  
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CAMERON W. FOX  
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SARA B. KALIS  
ERIC DISTELBURGER

By: \_\_\_\_\_



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Attorneys for Respondents  
GOOGLE, LLC and  
ALPHABET INC.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20**

---

GOOGLE, LLC and ALPHABET INC., a single employer,

Respondents,

and

EDWARD GRYSTAR, an Individual,

Case Nos.: 20-CA-252802

Charging Party,

and

KYLE DHILLON, an Individual,

20-CA-252902

Charging Party,

and

COMMUNICATION WORKERS OF AMERICA, AFL-CIO,

20-CA-252957

Charging Party,

20-CA-253105

20-CA-253464

and

AMR GABER, an Individual,

20-CA-253982

Charging Party.

---

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of June, 2021, I electronically filed the foregoing **ANSWER TO SECOND AMENDED COMPLAINT** with the National Labor Relations Board using the agency's website ([www.nlr.gov](http://www.nlr.gov)). I also certify that I have served said **ANSWER TO**

**SECOND AMENDED COMPLAINT** via e-mail, where available, and U.S. Mail to the following party to this action:

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DATED: June 23, 2021

Respectfully submitted,  
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By: \_\_\_\_\_



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Attorneys for Respondents  
GOOGLE, LLC and  
ALPHABET INC.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20**

---

GOOGLE, LLC and ALPHABET INC., a single employer,

Respondents,

and

EDWARD GRYSTAR, an Individual,

Case Nos.: 20-CA-252802

Charging Party,

and

KYLE DHILLON, an Individual,

20-CA-252902

Charging Party,

and

COMMUNICATION WORKERS OF AMERICA, AFL-CIO,

20-CA-252957

20-CA-253105

Charging Party,

20-CA-253464

and

AMR GABER, an Individual,

20-CA-253982

Charging Party.

---

**AMENDED ANSWER TO SECOND AMENDED COMPLAINT**

---

Google, LLC and Alphabet, Inc. (collectively “Respondents”), answer the allegations in the Second Amended Complaint (“Second Amended Complaint”) dated June 9, 2021, and assert their Affirmative Defenses, as follows:

1. In answering paragraph 1 of the Second Amended Complaint:

(a) Admit;

- (b) Admit;
- (c) Admit;
- (d) Admit;
- (e) Admit;
- (f) Admit;
- (g) Admit;
- (h) Admit;
- (i) Admit.

2. In answering paragraph 2 of the Second Amended Complaint:

- (a) Admit;
- (b) Admit;
- (c) Admit.

3. In answering paragraph 3 of the Second Amended Complaint:

- (a) Admit;
- (b) Admit;
- (c) Admit.

4. In answering paragraph 4 of the Second Amended Complaint:

- (a) Admit that, for the purposes of this Second Amended Complaint, Respondents are a single employer. Except as expressly admitted, deny;
- (b) Admit that, for the purposes of this Second Amended Complaint, Respondents are a single employer. Except as expressly admitted, deny.

5. Admit.

6. (a) In answering paragraph 6(a) of the Second Amended Complaint:

- (i) Admit that Adrian Crowther was a supervisor within the meaning of Section 2(11) of the Act, in or around September 1, 2019 through October 14, 2019, when she held the position of Director, People Technology and Operations, and in or around October 15 through December 31, 2019, when she held the job title of Director, People Programs (incorrectly identified as holding this position since September 1, 2019 in the Second Amended Complaint);
- (ii) Admit that Lynne Williams was a supervisor within the meaning of Section 2(11) of the Act, in or around September 1, 2019 through October 14, 2019, when she held the job title of Manager – Operations, and in or around October 15, 2019 through December 31, 2019, when she held the job title of People Programs Manager (incorrectly identified as holding this position since September 1, 2019 in the Second Amended Complaint);
- (iii) Admit that Tim Swanson was a supervisor within the meaning of Section 2(11) of the Act, in or around November 2019, when he held the job title of Senior Software Engineer;
- (iv) Admit that Jered Wierbickisky was a supervisor within the meaning of Section 2(11) of the Act, in or around November 1, 2019 through December 31, 2019, when he held the job title of Staff Software Engineer;



- (v) Deny that Kibra Yemane was a supervisor within the meaning of Section 2(11) of the Act, in or around November 1, 2019 through December 31, 2019, holding a job title of People Partner;
  - (vi) Admit that Ben Johns was a supervisor within the meaning of Section 2(11) of the Act, in or around November 1, 2019 through December 31, 2019, when he held the job title of Software Engineer;
  - (vii) Admit that Jeff Gilbert was a supervisor within the meaning of Section 2(11) of the Act, in or around November 1, 2019 through December 31, 2019, when he held the job title of Principal Software Engineer;
  - (viii) Admit that Carter Gibson was a supervisor within the meaning of Section 2(11) of the Act, in or around July 1, 2019 to December 31, 2019, when he held the job title of Program Manager (incorrectly identified as Community Moderation Manager in the Second Amended Complaint).
- (b) In answering paragraph 6(b) of the Second Amended Complaint:
- (i) Admit that Brad Fuller was an agent within the meaning of Section 2(13) of the Act in or around September 1, 2019 through October 15, 2019 when he held the job title of Investigator and in or around October 16, 2019 through December 31, 2019, when he held the job title of Safety & Security Specialist (incorrectly identified as holding this position since September 1, 2019 in the Second Amended Complaint);

- (ii) Admit that Traci Cravitz was an agent within the meaning of Section 2(13) of the Act in or around November 1, 2019 through December 31, 2019, when she held the job title of Safety & Security Specialist;
- (iii) Admit that Stephen King was an agent within the meaning of Section 2(13) of the Act in or around November 1, 2019 through December 31, 2019, when he held the job title of Director, Security & Safety;
- (iv) Admit that Charles Leynes was an agent within the meaning of Section 2(13) of the Act in or around November 2019, when he held the job title of Safety & Security Specialist;
- (v) Admit that Heather Adkins was an agent within the meaning of Section 2(13) of the Act in or around November 1, 2019 through December 31, 2019, when she held the job title of Security Engineer Director;
- (vi) Admit that Chris Rackow was an agent within the meaning of Section 2(13) of the Act in or around November 2019, when he held the job title of VP G&A;
- (vii) Admit that Royal Hansen was an agent within the meaning of Section 2(13) of the Act in or around November 2019, when he held the job title of Vice President, Engineering;
- (viii) Admit that Mikayla Cameron was an agent within the meaning of Section 2(13) of the Act in or around November 2019, when she held the job title of People Partner;

- (ix) Admit that Unnamed Agent # 1 was an agent within the meaning of Section 2(13) of the Act in or around November 1, 2019 through December 31, 2019, when he held the job title of Senior Counsel, Ethics and Compliance (incorrectly identified as Senior Counsel in the Second Amended Complaint);
- (x) Admit that Unnamed Agent # 2 was an agent within the meaning of Section 2(13) of the Act in or around May 1, 2019 through December 31, 2019, when he held the job title of Senior Vice President, Global Affairs & Chief Legal Officer (incorrectly identified as SVP, Legal in the Second Amended Complaint);
- (xi) Admit that Unnamed Agent #3 was an agent within the meaning of Section 2(13) of the Act in or around November 1, 2019 through December 15, 2019, when she held the job title of Discovery Staff Attorney, and in or around December 16, 2019 through December 31, 2019 when she held the position of Associate Corporate Counsel, Ethics & Compliance Investigations (incorrectly identified as Attorney in the Second Amended Complaint);
- (xii) Admit that Unnamed Agent #4 was an agent within the meaning of Section 2(13) of the Act in or around September 2019, when she held the job title of Vice President – Employment Legal ((incorrectly identified as Vice President – Legal Department in the Second Amended Complaint);

- (xiii) Admit that Nicole Kuzdeba (misspelled in the Second Amended Complaint as Kuzdiba) was an agent within the meaning of Section 2(13) of the Act in or around November 1, 2019 through December 31, 2019, when she held the job title of People Partner (incorrectly identified as Human Resources Representative in the Second Amended Complaint);
- (xiv) Admit that Aleks Kagramanov was an agent within the meaning of Section 2(13) of the Act in or around September 1, 2019 through October 14, 2019, when he held the job title of HR Business Partner, in or around October 15, 2019, when he held the job title of Investigator, and in or around October 16, 2019 through December 31, 2019, when he held the job title of Safety & Security Manager (incorrectly identified as Safety & Security Specialist in the Second Amended Complaint);
- (xv) Admit that Sundar Pichai was an agent within the meaning of Section 2(13) of the Act in or around January 1, 2017 through December 31, 2019, when he held the job title of Chief Executive Officer; and
- (xvi) Admit that Sergey Brin was an agent within the meaning of Section 2(13) of the Act in or around January 1, 2017 through December 31, 2019, when he held the job title of President, Technology (incorrectly identified as President in the Second Amended Complaint).

7. Deny.

8. Deny.

9. Admit that on or about November 13, 2019, Charles Leynes and Traci Cravitz asked an employee questions about “access of employees’ calendars and MemeGen Takedown Documents.” Except as expressly admitted, deny.

10. In answering paragraph 10 of the Second Amended Complaint:

(a) Deny;

(b) Deny.

11. Deny.

12. Deny.

13. Deny.

14. In answering paragraph 14 of the Second Amended Complaint:

(a) Admit;

(b) Deny.

15. In answering paragraph 15 of the Second Amended Complaint:

(a) Deny;

(b) Deny.

16. In answering paragraph 16 of the Second Amended Complaint, Respondents state that:

(a) Deny;

(b) Deny.

17. In answering paragraph 17 of the Second Amended Complaint, Respondents state that:

- (a) Deny;
- (b) Admit Duke accessed documents related to Respondent's relationship with U.S. Customs and Border Control. Except as expressly admitted, deny;
- (c) Deny;
- (d) Admit Rivers, Duke, and Waldman accessed documents related to Respondent's relationship with U.S. Customs and Border Control. Except as expressly admitted, deny;
- (e) Admit Waldman published an internal document linking to some of the documents described in subparagraph 17(d). Except as expressly admitted, deny;
- (f) Deny;
- (g) Admit Rivers, Duke, and Waldman accessed documents related to Respondent's relationship with Palantir. Except as expressly admitted, deny;
- (h) Admit Waldman and Duke published an internal document linking to some of the documents described in subparagraph 17(g). Except as expressly admitted, deny;
- (i) Admit;
- (j) Deny.

18. In answering paragraph 18 of the Second Amended Complaint, Respondents state that:

- (a) Deny;

- (b) Admit Berland “accessed employee accessible calendars.” Further admit Berland accessed “documents regarding the MemeGen Takedown Process.” Except as expressly admitted, deny;
- (c) Admit Berland was “placed on administrative leave.” Except as expressly admitted, deny;
- (d) Admit Rivers was “placed on administrative leave.” Except as expressly admitted, deny;
- (e) Admit;
- (f) Deny.

19. In answering paragraph 19 of the Second Amended Complaint, Respondents state that:

- (a) Deny;
- (b) Deny;
- (c) Deny;
- (d) Deny;
- (e) Admit Kathryn Spiers wrote “code for a pop-up featuring an NLRB Notice from Case 32-CA-176462 that would automatically appear when an employee visited Respondent’s Community Guidelines and other web pages.” Except as expressly admitted, deny;
- (f) Admit;
- (g) Admit;
- (h) Admit;
- (i) Admit;

- (j) Admit;
  - (k) Admit;
  - (l) Admit;
  - (m) Admit;
  - (n) Deny;
  - (o) Deny.
20. Deny.
21. Deny.

### **AFFIRMATIVE DEFENSES**

1. The employees' conduct alleged in the Second Amended Complaint was not protected by the Act and, even if it was, the conduct lost any protection it might have otherwise had under the Act.

2. The discipline alleged in the Second Amended Complaint was warranted by violations of Respondents' policies, such as Google's Code of Conduct and Standards of Conduct policies, the validity of which are not at issue.

3. Respondents acted lawfully to maintain a work environment that is free of unlawful discrimination, harassment and bias.

4. Respondents deny any discipline alleged in the Second Amended Complaint was in whole or in part for protected conduct, but the same discipline would have been imposed even in the absence of protected conduct, and was based on legitimate business reasons and not discriminatory or retaliatory animus.



**WHEREFORE**, Respondents respectfully request the following relief:

1. Judgment be entered dismissing the Second Amended Complaint on the merits and with prejudice in its entirety; and
2. Directing such other relief as the Board deems just and equitable.

DATED: June 24, 2021

Respectfully submitted,  
PAUL HASTINGS LLP  
CAMERON W. FOX  
J. AL LATHAM, JR.  
SARA B. KALIS  
ERIC DISTELBURGER

By: \_\_\_\_\_

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Attorneys for Respondents  
GOOGLE, LLC and  
ALPHABET INC.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20**

---

GOOGLE, LLC and ALPHABET INC., a single employer,

Respondents,

and

EDWARD GRYSTAR, an Individual,

Case Nos.: 20-CA-252802

Charging Party,

and

KYLE DHILLON, an Individual,

20-CA-252902

Charging Party,

and

COMMUNICATION WORKERS OF AMERICA, AFL-CIO,

20-CA-252957

Charging Party,

20-CA-253105

20-CA-253464

and

AMR GABER, an Individual,

20-CA-253982

Charging Party.

---

**CERTIFICATE OF SERVICE**

I hereby certify that on the 24<sup>th</sup> day of June, 2021, I electronically filed the foregoing **AMENDED ANSWER TO SECOND AMENDED COMPLAINT** with the National Labor Relations Board using the agency's website (www.nlr.gov). I also certify that I have served said

**AMENDED ANSWER TO SECOND AMENDED COMPLAINT** via e-mail, where available,

and U.S. Mail to the following party to this action:

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DATED: June 24, 2021

Respectfully submitted,  
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CAMERON W. FOX  
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SARA B. KALIS  
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By: \_\_\_\_\_

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GOOGLE, LLC and  
ALPHABET INC.



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 20  
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July 16, 2021

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San Francisco, CA 94111-5871

Cameron W. Fox, Attorney  
Paul Hastings, LLP  
515 South Flower Street 25th Floor  
Los Angeles, CA 90071-2228

Re: Google, LLC and Alphabet Inc., a single  
employer  
Case 20-CA-252957

Dear Ms. Kalis, Mr. Latham, Mr. Distelburger, Ms. Fox:

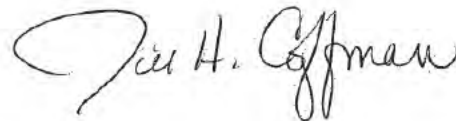
This is to advise that I have approved the withdrawal of the portions of the above-referenced charge alleging that Google, LLC and Alphabet Inc. (Employer) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by placing an employee on Administrative Leave because he accessed employee accessible calendars and documents regarding the MemeGen Takedown Process for the purpose of protected concerted activities; interrogating the same employee about their protected concerted activities; and terminating the employee because of his protected concerted activities .

The remaining allegations of the charge remain subject to further processing. Specifically, the allegations that the Employer violated Section 8(a)(1) of the Act by promulgating a Calendar Access rule and a Calendar Event Rule in response to employees' protected concerted activities; discriminatorily enforcing its Data Classification Policy by applying it to employees engaged in protected concerted activities; placing another employee on administrative leave because she accessed employee accessible documents regarding the MemeGen Takedown process for the purpose of protected concerted activities, interrogating the same employee about her protected concerted activities; terminating the same employee because

July 16, 2021

of these activities and because she accessed employee accessible documents regarding the Employer's relationship with U.S. Customs and Border Control and Palantir for the purpose of protected concerted activities; and terminating two other employees because they accessed employee accessible documents regarding the Employer's relationship with U.S. Customs and Border Control and Palantir for the purpose of protected concerted activities.

Very truly yours,



JILL H. COFFMAN  
Regional Director

cc: Michael Pfyl, Director, Legal -  
Employment  
201 Spear Street  
San Francisco, CA 94105

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Communications Workers of America  
(CWA), AFL-CIO  
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Washington, DC 20001

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San Francisco, CA 94110-1435

Laurence Berland  
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Paul Duke  
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Brooklyn, NY 11217

Rebecca Rivers  
2450 Airport Road, Apt. 1287  
Longmont, CO 80503

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20**

GOOGLE, LLC and ALPHABET INC., a single  
employer

and

EDWARD GRYSTAR, an Individual

**Cases 20-CA-252802**

and

KYLE DHILLON, an Individual

**20-CA-252902**

and

COMMUNICATIONS WORKERS OF AMERICA,  
AFL-CIO

**20-CA-252957  
20-CA-253105  
20-CA-253464**

and

KATHRYN SPIERS, Intervenor

(20-CA-253105;  
20-CA-253464)

and

SOPHIE WALDMAN, Intervenor

(20-CA-252957)

and

PAUL DUKE, Intervenor

(20-CA-252957)

And

REBECCA RIVERS, Intervenor

(20-CA-252957)

**THIRD-AMENDED COMPLAINT AND NOTICE OF HEARING**

Edward Grystar (Grystar), Kyle Dhillon (Dhillon), and the Communications Workers of America, AFL-CIO (Union), (collectively, Charging Parties) have charged that Google, LLC

(Google) and Alphabet Inc. (Alphabet), a single employer (Respondent), has been engaging in unfair labor practices affecting commerce as set forth in the National Labor Relations Act, 29 U.S.C., Sec. 151, et seq., (the Act), and a Complaint and Notice of Hearing issued based on those charges on December 2, 2020, and a Second-Amended Complaint issued on June 9, 2021. The Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.17 of the Board's Rules and Regulations, now issues this Third-Amended Complaint and Notice of Hearing and alleges as follows:

1. (a) The charge in Case 20-CA-252802 was filed by Grystar against Google, LLC on December 3, 2019, and a copy was served on Google by U.S. mail on December 4, 2019.

(b) A first-amended charge in Case 20-CA-252802 was filed by Grystar against Google, LLC on December 1, 2020, and a copy was served on Google by U.S. mail on December 2, 2020.

(c) The charge in Case 20-CA-252902 was filed by Dhillon against Google, LLC on December 5, 2019, and a copy was served on Google by U.S. mail on December 6, 2019.

(d) A first-amended charge in Case 20-CA-252902 was filed by Dhillon against Google, LLC on December 1, 2020, and a copy was served on Google by U.S. mail on December 2, 2020.

(e) The charge in Case 20-CA-252957 was filed by the Union on December 5, 2019, and a copy was served on Respondent by U.S. mail on December 6, 2019.

(f) A first-amended charge was filed in Case 20-CA-252957 by the Union on March 9, 2020, and a copy was served on Respondent by U.S. mail on March 10, 2020.

(g) The charge in Case 20-CA-253105 was filed by the Union on December 9, 2019, and a copy was served on Respondent by U.S. mail on December 10, 2019.



(h) The charge in Case 20-CA-253464 was filed by the Union on December 16, 2019, and a copy was served on Respondent by U.S. mail on December 17, 2019.

2. (a) At all material times, Google, a California limited liability company with offices and places of business in Mountain View, California, New York, New York, and elsewhere, is a technology company specializing in a search-engine and other internet-related services and products.

(b) During the twelve-month period ending October 31, 2020, Google, in conducting its business operations described above in subparagraph 2(a), derived gross revenues in excess of \$500,000.

(c) During the period of time described above in subparagraph 2(b), Google, in conducting its business operations described above in subparagraph 2(a), purchased and received at its Mountain View, California, office and place of business, goods valued in excess of \$5,000 directly from points outside the State of California.

3. (a) At all material times, Alphabet, a California corporation with its headquarter office and place of business located in Mountain View, California, is a technology conglomerate and parent holding company of Google, Waymo, and other subsidiaries.

(b) During the twelve-month period ending October 31, 2020, Alphabet, in conducting its business operations described above in subparagraph 3(a), derived gross revenues in excess of \$500,000.

(c) During the period of time described above in subparagraph 3(b), Alphabet, in conducting its business operations described above in subparagraph 3(a), purchased and received at its Mountain View, California, office and place of business, goods valued in excess of \$5,000 directly from points outside the State of California

4. (a) At all material times, Google and Alphabet have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have interrelated operations with common insurance and purchasing and sales; and have held themselves out to the public as a single-integrated business enterprise.

(b) Based on its operations described above in subparagraph 4(a), Google and Alphabet constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

5. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

6. (a) For the time periods specified herein, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act:

¶	Individual	Position	Time Period
i.	Tim Swanson	Senior Software Engineer	November 2019
ii.	Jered Wierbickisky	Staff Supervisor	From November 1, 2019 to December 31, 2019.
iii.	Ben Johns	Software Engineer	From November 1, 2019 to December 31, 2019.
iv.	Jeff Gilbert	Principal Software Engineer	From November 1, 2019 to December 31, 2019.

v.	Carter Gibson	Community Moderation Manager	From at least July 1, 2019 to December 31, 2019.
vi.	Dorota Was	Software Engineer	From at least July 1, 2019 to December 31, 2019.
vii.	Guobiao Mei	Software Engineer	From at least July 1, 2019 to December 31, 2019.

(b) For the time periods specified herein, the following individuals held the positions set forth opposite their respective names and have been agents of the Respondent within the meaning of Section 2(13) of the Act:

¶	Individual	Position	Time Period
i.	Brad Fuller	Safety & Security Specialist	From September 1, 2019 to December 31, 2019.
ii.	Traci Cravitz	Safety & Security Specialist	From November 1, 2019 to December 31, 2019.
iii.	Steven King	Director, Safety & Security	From November 1, 2019 to December 31, 2019.
iv.	Charles Leynes	Safety & Security Specialist	November 2019
v.	Heather Adkins	Security Engineer Director	From November 1, 2019 to December 31, 2019.
vi.	Chris Rackow	VP G&A	November 2019
vii.	Royal Hansen	Vice President, Engineering	November 2019

viii.	Mikayla Cameron	People Partner	November 2019
ix.	Kibra Yemane	People Consultant	From November 1, 2019 to December 31, 2019.
x.	Unnamed Agent #1		From November 1, 2019 to December 31, 2019.
xi.	Unnamed Agent #2		From at least May 1, 2019 through at least December 31, 2019.
xii.	Unnamed Agent #3		From November 1, 2019 to December 31, 2019.
xiii.	Unnamed Agent #4		September 2019
xiv.	Nicole Kuzdiba	Human Resources Representative	From November 1, 2019 to December 31, 2019.
xv.	Aleks Kagramanov	Safety & Security Specialist	From at least September 1, 2019 to at least December 31, 2019.
xvi.	Sundar Pichai	Chief Executive Officer	From at least January 1, 2017 to at least December 31, 2019.
xvii.	Sergey Brin	President	From at least January 1, 2017 to at least December 31, 2019.
xviii.	Thomas Kurian	VP, Google Cloud	From at least July 1, 2019, to at least December 31, 2019.

7. About November 8, 2019, Respondent, by Brad Fuller and Traci Cravitz, interrogated its employees about their protected concerted activities by asking them about accessing MemeGen Takedown Documents. (Case 20-CA-252957)

8. (a) On November 27, 2019, Respondent, by Steven King, interrogated its employees about their protected concerted activities by asking them about their creation of a Google Form that expressed concerns about Respondent's enforcement of its Need-to-Know Policy to Unnamed Agent # 2. (Case 20-CA-25802).

(b) On December 9, 2019, Respondent, by Traci Cravitz, interrogated its employees about their protected concerted activities by asking them about their creation of the Google Form described in subparagraph 8(a), about their suspected creation of a Moma badge related to the emails sent by the Google Form described in subparagraph 8(a), and about their involvement in organizing groups with other employees. (Case 20-CA-25802).

9. On December 5 and 6, 2019, Respondent, by Unnamed Agent #3, interrogated its employees about their protected concerted activities by asking them about their creation of a chrome extension that sent emails expressing concerns about Respondent's enforcement of its Need-to-Know Policy to Unnamed Agent # 2. (Cases 20-CA-253105, 20-CA-253464).

10. On December 9, 2019, Respondent, by Traci Cravitz, interrogated its employees about their protected concerted activities by asking them about their creation of a chrome extension that sent emails expressing concerns about Respondent's enforcement of its Need-to-Know Policy to Unnamed Agent # 2. (Case 20-CA-252902).

11. About December 18, 2019, Respondent, by Unnamed Agent #1, in a meeting which included Supervisors Jered Wierbickisky, Director of Detection and Response Heather Adkins, and Manager Kibra Yemane, threatened employees with unspecified reprisals by requiring

employees to raise workplace concerns through official channels including Code of Conduct alias or go/my-concerns. (Case 20-CA-252802).

12. (a) At all material times, Respondent has maintained Data Classification Policies pertaining to accessing Need-to-Know documents.

(b) Since about November 2019, Respondent, by Traci Cravitz and Charles Leynes, enforced the rule described above in subparagraph 12(a) selectively and disparately by applying it only against employees who engaged in protected, concerted activities. (Case 20-CA-252957).

13. (a) About November 2019, Respondent, by email, promulgated and has since then maintained a Calendar Access rule prohibiting employees from accessing other employees' calendars without a business purpose.

(b) Respondent promulgated and maintained the rule described above in subparagraph 13(a) to discourage its employees from forming, joining, assisting a union or engaging in other protected, concerted activities. (Case 20-CA-252957)

14. (a) About October 2019, Respondent promulgated and has since then maintained a Calendar Event rule prohibiting employees from creating calendar events with more than 100 invitees or using more than 10 rooms without a business purpose.

(b) Respondent promulgated and maintained the rule described above in subparagraph 14(a) to discourage its employees from forming, joining, assisting a union or engaging in other protected, concerted activities. (Case 20-CA-252957)

15. (a) Around July 2019, employees Paul Duke, Sophia Waldman engaged in concerted activities with other employees for the purposes of mutual aid and protection by discussing concerns about a public document showing that U.S. Customs and Border Protection

requested information from Respondent about its cloud computing services, including whether employees' work might be used for the potential project.

(b) Around July 2019, employee Paul Duke engaged in concerted activities with other employees for the purposes of mutual aid and protection by accessing employee accessible documents related to the Respondent's relationship with U.S. Customs and Border Protection.

(c) On August 14, 2019, employees Paul Duke and Sophia Waldman engaged in concerted activities with other employees for the purposes of mutual aid and protection by disseminating a petition protesting Respondent's relationship with U.S. Customs and Border Protection.

(d) Between August 14, 2019, and August 19, 2019, employees Rebecca Rivers, Paul Duke, and Sophia Waldman engaged in concerted activities with other employees for the purposes of mutual aid and protection by accessing employee accessible documents related to Respondent's relationship with U.S. Customs and Border Protection.

(e) On August 19, 2019, Sophia Waldman engaged in concerted activities with other employees for the purposes of mutual aid and protection by publishing an internal document linking to some of the documents described in subparagraph 15(d).

(f) Around September 2019, employees Paul Duke and Sophia Waldman engaged in concerted activities with other employees for the purposes of mutual aid and protection by discussing concerns about Respondent's relationship with the software company Palantir.

(g) Around September 2019, employees Rebecca Rivers, Paul Duke, and Sophia Waldman engaged in concerted activities with other employees for the purposes of mutual

aid and protection by accessing employee accessible documents related to the Respondent's relationship with Palantir.

(h) On September 24, 2019, Sophia Waldman and Paul Duke engaged in concerted activities with other employees for the purposes of mutual aid and protection by publishing an internal document linking to some of the documents described in subparagraph 15(g).

(i) On November 25, 2019, Respondent terminated the employment of Rebecca Rivers, Paul Duke, and Sophia Waldman.

(j) Respondent engaged in the conduct described above in subparagraph 15(i) because Rebecca Rivers, Paul Duke, and Sophia Waldman engaged in the conduct described above in subparagraphs 15(a)-15(h), and to discourage employees from engaging in these or other concerted activities.

16. (a) About October 2019, employee Rebecca Rivers engaged in concerted activities with other employees for the purposes of mutual aid and protection by posting workplace concerns on MemeGen.

(b) About early November 2019, Rivers accessed employee accessible documents regarding the MemeGen Takedown Process.

(c) About November 7, 2019, Respondent placed Rivers on administrative leave for accessing documents regarding the MemeGen Takedown Process.

(d) About November 25, 2019, Respondent terminated the employment of Rivers.

(e) Respondent engaged in the conduct described above in subparagraphs 16(c) and (d) because Rivers engaged in the conduct described above in subparagraphs 16(a) and (b) and



to discourage employees from engaging in these or other concerted activities. (Case 20-CA-252957)

17. (a) On November 18, 2019, Respondent's employee Eddie Grystar concertedly complained to Respondent regarding the wages, hours, and working conditions of Respondent's employees, by emailing employees' concerns about Respondent's enforcement of its Need-to-Know policy and creating a Google Form for other employees to express the same concerns to Unnamed Agent #2.

(b) On November 18, 2019, Respondent's employees Kyle Dhillon and Kathryn Spiers engaged in concerted activities with each other for the purposes of mutual aid and protection, by creating and sharing a Google Document titled, "'Need to Know' Self-Reporter DD," which expressed concerns about Respondent's enforcement of its Need-to-Know policy.

(c) On November 21, 2019, Respondent's employees Kyle Dhillon and Kathryn Spiers concertedly complained to Respondent regarding the wages, hours, and working conditions of Respondent's employees, by creating a chrome extension that sent emails expressing concerns about Respondent's enforcement of its Need-to-Know Policy to Unnamed Agent # 2.

(d) Around November 20, 2019, Respondent's employee Eddie Grystar engaged in concerted activities with other employees for the purposes of mutual aid and protection by organizing a November 22, 2019, protest at the Employer's San Francisco facility to express concern about the Employer's placement of other employees on administrative leave.

(e) About November 23, 2019, employee Kathryn Spiers began writing code for a pop-up featuring an NLRB Notice from Case 32-CA-176462 that would automatically appear when an employee visited Respondent's Community Guidelines and other web pages.

(f) About November 24, 2019, Respondent's employee Kyle Dhillon performed a code review for the code referenced above in subparagraph 17(e).

(g) About November 25, 2019, Respondent's employee Edward Grystar performed a readability review for the code referenced above in subparagraph 17(e).

(h) About November 25, 2019, Respondent placed Kathryn Spiers on Administrative Leave. (Cases 20-CA-253105 and 20-CA-253464)

(i) About November 26, 2019, Respondent turned off employee Kyle Dhillon's cell phone service. (Case 20-CA-252902)

(j) About November 27, 2019, Respondent placed employees Kyle Dhillon and Edward Grystar on administrative leave. (Cases 20-CA-252802 and 20-CA-252902)

(k) About December 18, 2019, Respondent issued employee Kyle Dhillon a final written warning. (Case 20-CA-252902)

(l) About December 19, 2019, Respondent counseled Edward Grystar and placed him on a 6-month monitoring of his readability and LGTM reviews. (Case 20-CA-252802)

(m) About December 13, 2019, Respondent terminated the employment of Kathryn Spiers. (Case 20-CA-253464)

(n) Respondent engaged in the conduct described above in subparagraphs 17(i) through 17(l) because Dhillon and Grystar engaged in the conduct described above in subparagraphs 17 (a)-(d), (f) and (g) and to discourage employees from engaging in these or other concerted activities. (Cases 20-CA-252802 and 20-CA-252902).

(o) Respondent engaged in the conduct described above in subparagraphs 17(h) and (m) because Spiers engaged in the conduct described above in subparagraphs 17(b), (c), and

(e) and to discourage employees from engaging in these or other concerted activities. (Case 20-CA-253464).

18. By the conduct described above in paragraphs 7 through 17, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

19. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Third-Amended Complaint. The answer must be **received by this office on or before August 2, 2021**. Respondent also must serve a copy of the answer on each of the other parties.

The answer must be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not

represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission.

If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Third-Amended Complaint are true.

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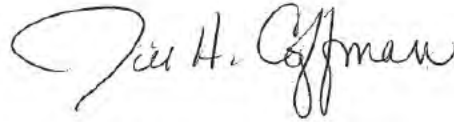
### **HEARING**

As previously ordered, on **August 23, 2021, at 9:00 a.m.**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board at 901 Market Street, Suite 400, San Francisco, California, or method or means, including videoconference, directed by the Administrative Law Judge. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Third-Amended Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request

Third-Amended Complaint and Notice of Hearing  
Cases 20-CA-252802, et al

a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: July 19, 2021

A handwritten signature in black ink, reading "Jill H. Coffman". The signature is fluid and cursive, with the first name "Jill" and last name "Coffman" clearly legible.

---

JILL H. COFFMAN  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 20  
901 Market Street, Suite 400  
San Francisco, CA 94103-1738

Attachments

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**NOTICE**

Cases 20-CA-252802, 20-CA-252902, 20-CA-252957, 20-CA-253105, and 20-CA-253464

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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(CWA), AFL-CIO  
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## Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules\\_and\\_regs\\_part\\_102.pdf](http://www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at [www.nlrb.gov](http://www.nlrb.gov), click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

**Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement.** The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

### I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- ! **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- ! **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

### II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- ! **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- ! **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility



of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- ! **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- ! **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- ! **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

### III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- ! **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- ! **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- ! **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20**

GOOGLE, LLC and ALPHABET INC., a single employer

and

EDWARD GRYSTAR, an Individual

**Cases 20-CA-252802**

and

KYLE DHILLON, an Individual

**20-CA-252902**

and

COMMUNICATIONS WORKERS OF AMERICA, AFL-  
CIO

**20-CA-252957  
20-CA-253105  
20-CA-253464**

and

KATHRYN SPIERS, Intervenor

(20-CA-253105; 20-CA-253464)

and

SOPHIE WALDMAN, Intervenor

(20-CA-252957)

and

PAUL DUKE, Intervenor

(20-CA-252957)

and

REBECCA RIVERS, Intervenor

(20-CA-252957)

**AMENDMENT TO THIRD-AMENDED COMPLAINT**

Pursuant to Section 102.17 of the Rules and Regulations of the National Labor Relations Board (the Board), IT IS ORDERED that the Third-Amended Complaint and Notice of Hearing issued on July 19, 2021, be amended to replace paragraph 12 with the following:

12. (a) At all material times, Respondent has maintained Data Classification Policies pertaining to accessing Need-to-Know documents.

(b) Since about November 2019, Respondent, by its agents including, but not limited to, Brad Fuller, Traci Cravitz, and those serving on Respondent's Abuse Review Committee, amongst others, enforced the rule described above in subparagraph 12(a) selectively and disparately by applying it only against employees who engaged in protected, concerted activities. (Case 20-CA-252957).

### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an Answer to the Amendment to Third-Amended Complaint. The answer must be **received by this office on or before August 9, 2021**. Respondent also must serve a copy of the answer on each of the other parties.

The answer must be filed electronically through the Agency's website. To file electronically, go to [www.nlrb.gov](http://www.nlrb.gov), click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature

continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission.

If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Amendment to the Third-Amended Complaint are true.

### **HEARING**

As previously ordered, on **August 23, 2021, at 9:00 a.m.**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board at 901 Market Street, Suite 400, San Francisco, California, or method or means, including videoconference, directed by the Administrative Law Judge. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Amendment to the Third-Amended Complaint and in the Third-Amended Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: July 26, 2021

*/s/ Dale Yashiki*

---

DALE YASHIKI  
ACTING REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 20  
901 Market Street, Suite 400  
San Francisco, CA 94103-1738

Attachments

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**NOTICE**

Cases 20-CA-252802, 20-CA-252902, 20-CA-252957, 20-CA-253105, and 20-CA-253464

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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519 66th Street Apt B  
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Amendment to Complaint  
Cases 20-CA-252802, et al

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Patricia M. Shea  
Communications Workers of America  
(CWA), AFL-CIO  
501 Third St NW, Ste 800  
Washington, DC 20001-2797

## Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules\\_and\\_regs\\_part\\_102.pdf](http://www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at [www.nlrb.gov](http://www.nlrb.gov), click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

**Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement.** The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

### I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

### II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility

of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

### III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20**

**GOOGLE, LLC AND ALPHABET INC., A  
SINGLE EMPLOYER**

**and**

**COMMUNICATIONS WORKERS OF AMERICA,  
AFL-CIO AND AFL-CIO LAWYERS  
COORDINATING COMMITTEE, EDWARD  
GRYSTAR, KYLE SINGH DHILLON AND AMR  
GABER**

**Case 20-CA-252802; 20-CA-  
252902; 20-CA-252957; 20-  
CA-253105; 20-CA-253464;  
20-CA-253982**

**AFFIDAVIT OF SERVICE OF: Amendment to Third Amended Complaint and Notice  
of Hearing (with forms NLRB-4338 and NLRB-4668 attached)**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on July 26, 2021, I served the above-entitled document(s) by **electronic mail**, as noted below, upon the following persons, addressed to them at the following addresses:

Sara Kalis , ESQ.  
Paul Hastings LLP  
200 Park Avenue  
New York, NY 10166

**E-MAIL**

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Paul Hasting LLP  
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Michael Pfyl , Director, Legal – Employment  
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Patricia M. Shea , ESQ.  
Communications Workers of America  
(CWA), AFL-CIO  
501 Third St., NW  
6th Floor, Legal Dept.  
Washington, DC 20001

**E-MAIL**

July 26, 2021

Date

Donna Gentry, Designated Agent of NLRB

Name

*/s/ Donna Gentry*

Signature

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**NOTICE**

Case 20-CA-252802

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Washington, DC 20001-2797

Amr Gaber , Union Representative  
1377 Minna Street  
San Francisco, CA 94103

## Procedures in NLRB Unfair Labor Practice Hearings

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**in evidence.** If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

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- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

### III. AFTER THE HEARING

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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20**

---

GOOGLE, LLC and ALPHABET INC., a single employer,

Respondents,

and

EDWARD GRYSTAR, an Individual,

Case Nos.: 20-CA-252802

Charging Party,

and

KYLE DHILLON, an Individual,

20-CA-252902

Charging Party,

and

COMMUNICATION WORKERS OF AMERICA, AFL-CIO,

20-CA-252957

20-CA-253105

Charging Party,

20-CA-253464

and

AMR GABER, an Individual,

20-CA-253982

Charging Party.

---

**ANSWER TO THIRD AMENDED COMPLAINT AND  
ANSWER TO AMENDMENT TO THE THIRD AMENDED COMPLAINT**

---

Google, LLC and Alphabet, Inc. (collectively “Respondents”), answer the allegations in the Third Amended Complaint (“Third Amended Complaint”) dated July 19, 2021, and the Amendment to the Third Amended Complaint (“Amended Third Amended Complaint”) dated July 26, 2021, and assert their Affirmative Defenses, as follows:



1. In answering paragraph 1 of the Third Amended Complaint, Respondents state that:
  - (a) Admit;
  - (b) Admit;
  - (c) Admit;
  - (d) Admit;
  - (e) Admit;
  - (f) Admit;
  - (g) Admit;
  - (h) Admit;
2. In answering paragraph 2 of the Third Amended Complaint, Respondents state that:
  - (a) Admit;
  - (b) Admit;
  - (c) Admit.
3. In answering paragraph 3 of the Third Amended Complaint, Respondents state that:
  - (a) Admit;
  - (b) Admit;
  - (c) Admit.
4. In answering paragraph 4 of the Third Amended Complaint, Respondents state that:
  - (a) Admit that, for the purposes of this Third Amended Complaint, as amended, Respondents are a single employer. Except as expressly admitted, deny;
  - (b) Admit that, for the purposes of this Third Amended Complaint, as amended, Respondents are a single employer. Except as expressly admitted, deny.
5. Admit.

6. (a) In answering paragraph 6(a) of the Third Amended Complaint:
- (i) Admit that Tim Swanson was a supervisor within the meaning of Section 2(11) of the Act, in or around November 2019, when he held the job title of Senior Software Engineer;
  - (ii) Admit that Jered Wierbickisky was a supervisor within the meaning of Section 2(11) of the Act, in or around November 1, 2019 through December 31, 2019, when he held the job title of Staff Software Engineer (incorrectly identified as Staff Supervisor in the Third Amended Complaint);
  - (iii) Admit that Ben Johns was a supervisor within the meaning of Section 2(11) of the Act, in or around November 1, 2019 through December 31, 2019, when he held the job title of Software Engineer;
  - (iv) Admit that Jeff Gilbert was a supervisor within the meaning of Section 2(11) of the Act, in or around November 1, 2019 through December 31, 2019, when he held the job title of Principal Software Engineer;
  - (v) Admit that Carter Gibson was a supervisor within the meaning of Section 2(11) of the Act, in or around July 1, 2019 to December 31, 2019, when he held the job title of Program Manager (incorrectly identified as Community Moderation Manager in the Third Amended Complaint);
  - (vi) Admit that Dorota Was was a supervisor within the meaning of Section 2(11) of the Act, in or around July 1, 2019 to December 31,

2019, when she held the job title of Senior Software Engineer (incorrectly identified as Software Engineer in the Third Amended Complaint);

(vii) Admit that Guobiao Mei was a supervisor within the meaning of Section 2(11) of the Act, in or around July 1, 2019 to December 31, 2019, when they held the job title of Staff Software Engineer (incorrectly identified as Software Engineer in the Third Amended Complaint);

(b) In answering paragraph 6(b) of the Third Amended Complaint:

(i) Admit that Brad Fuller was an agent within the meaning of Section 2(13) of the Act in or around September 1, 2019 through October 15, 2019 when he held the job title of Investigator and in or around October 16, 2019 through December 31, 2019, when he held the job title of Safety & Security Specialist (incorrectly identified as holding this position since September 1, 2019 in the Third Amended Complaint);

(ii) Admit that Traci Cravitz was an agent within the meaning of Section 2(13) of the Act in or around November 1, 2019 through December 31, 2019, when she held the job title of Safety & Security Specialist;

(iii) Admit that Stephen King was an agent within the meaning of Section 2(13) of the Act in or around November 1, 2019 through December 31, 2019, when he held the job title of Director, Security & Safety;

- (iv) Admit that Charles Leynes was an agent within the meaning of Section 2(13) of the Act in or around November 2019, when he held the job title of Safety & Security Specialist;
- (v) Admit that Heather Adkins was an agent within the meaning of Section 2(13) of the Act in or around November 1, 2019 through December 31, 2019, when she held the job title of Security Engineer Director;
- (vi) Admit that Chris Rackow was an agent within the meaning of Section 2(13) of the Act in or around November 2019, when he held the job title of VP G&A;
- (vii) Admit that Royal Hansen was an agent within the meaning of Section 2(13) of the Act in or around November 2019, when he held the job title of Vice President, Engineering;
- (viii) Admit that Mikayla Cameron was an agent within the meaning of Section 2(13) of the Act in or around November 2019, when she held the job title of People Partner;
- (ix) Admit that Kibra Yemane was an agent within the meaning of Section 2(13) of the Act in or around November 1, 2019 through December 31, 2019, when she held the job title of People Consultant;
- (x) Admit that Unnamed Agent # 1 was an agent within the meaning of Section 2(13) of the Act in or around November 1, 2019 through

December 31, 2019, when he held the job title of Senior Counsel, Ethics and Compliance;

- (xi) Admit that Unnamed Agent # 2 was an agent within the meaning of Section 2(13) of the Act in or around May 1, 2019 through December 31, 2019, when he held the job title of Senior Vice President, Global Affairs & Chief Legal Officer;
- (xii) Admit that Unnamed Agent #3 was an agent within the meaning of Section 2(13) of the Act in or around November 1, 2019 through December 15, 2019, when she held the job title of Discovery Staff Attorney, and in or around December 16, 2019 through December 31, 2019 when she held the position of Associate Corporate Counsel, Ethics & Compliance Investigations;
- (xiii) Admit that Unnamed Agent #4 was an agent within the meaning of Section 2(13) of the Act in or around September 2019, when she held the job title of Vice President – Employment Legal;
- (xiv) Admit that Nicole Kuzdeba (misspelled in the Third Amended Complaint as Kuzdiba) was an agent within the meaning of Section 2(13) of the Act in or around November 1, 2019 through December 31, 2019, when she held the job title of People Partner (incorrectly identified as Human Resources Representative in the Third Amended Complaint);
- (xv) Admit that Aleks Kagramanov was an agent within the meaning of Section 2(13) of the Act in or around September 1, 2019 through

October 14, 2019, when he held the job title of HR Business Partner, in or around October 15, 2019, when he held the job title of Investigator, and in or around October 16, 2019 through December 31, 2019, when he held the job title of Safety & Security Manager (incorrectly identified as Safety & Security Specialist in the Third Amended Complaint);

(xvi) Admit that Sundar Pichai was an agent within the meaning of Section 2(13) of the Act in or around January 1, 2017 through December 31, 2019, when he held the job title of Chief Executive Officer;

(xvii) Admit that Sergey Brin was an agent within the meaning of Section 2(13) of the Act in or around January 1, 2017 through December 31, 2019, when he held the job title of President, Technology;

(xviii) Admit that Thomas Kurian was an agent within the meaning of Section 2(13) of the Act in or around July 1, 2019 to December 31, 2019, when he held the job title of Senior Vice President, Google Cloud (incorrectly identified as VP, Google Cloud in the Third Amended Complaint).

7. Deny.

8. In answering paragraph 8 of the Third Amended Complaint:

(a) Deny;

(b) Deny.

9. Deny.

10. Deny.
11. Deny.
12. In answering paragraph 12 of the Amendment to the Third Amended Complaint:
  - (a) Admit;
  - (b) Deny.
13. In answering paragraph 13 of the Third Amended Complaint:
  - (a) Deny;
  - (b) Deny.
14. In answering paragraph 14 of the Third Amended Complaint:
  - (a) Deny;
  - (b) Deny.
15. In answering paragraph 15 of the Third Amended Complaint:
  - (a) Deny;
  - (b) Admit Duke accessed documents related to Respondent's relationship with U.S. Customs and Border Control. Except as expressly admitted, deny;
  - (c) Deny;
  - (d) Admit Rivers, Duke, and Waldman accessed documents related to Respondent's relationship with U.S. Customs and Border Control. Except as expressly admitted, deny;
  - (e) Admit Waldman published an internal document linking to some of the documents described in subparagraph 15(d). Except as expressly admitted, deny;
  - (f) Deny;

- (g) Admit Rivers, Duke, and Waldman accessed documents related to Respondent's relationship with Palantir. Except as expressly admitted, deny;
- (h) Admit Waldman and Duke published an internal document linking to some of the documents described in subparagraph 17(g). Except as expressly admitted, deny;
- (i) Admit;
- (j) Deny.

16. In answering paragraph 16 of the Third Amended Complaint, Respondents state that:

- (a) Deny;
- (b) Deny;
- (c) Admit Rivers was "placed on administrative leave." Except as expressly admitted, deny;
- (d) Admit;
- (e) Deny.

17. In answering paragraph 17 of the Third Amended Complaint, Respondents state that:

- (a) Deny;
- (b) Deny;
- (c) Deny;
- (d) Deny;



- (e) Admit Kathryn Spiers wrote “code for a pop-up featuring an NLRB Notice from Case 32-CA-176462 that would automatically appear when an employee visited Respondent’s Community Guidelines and other web pages.” Except as expressly admitted, deny;
- (f) Admit;
- (g) Admit;
- (h) Admit;
- (i) Admit;
- (j) Admit;
- (k) Admit;
- (l) Admit;
- (m) Admit;
- (n) Deny;
- (o) Deny.

18. Deny.

19. Deny.

#### **AFFIRMATIVE DEFENSES**

1. The employees’ conduct alleged in the Third Amended Complaint, as amended, was not protected by the Act and, even if it was, the conduct lost any protection it might have otherwise had under the Act.

2. The discipline alleged in the Third Amended Complaint was warranted by violations of Respondents’ policies, such as Google’s Code of Conduct and Standards of Conduct policies, the validity of which are not at issue.

3. Respondents acted lawfully to maintain a work environment that is free of unlawful discrimination, harassment and bias.

4. Respondents deny any discipline alleged in the Third Amended Complaint was in whole or in part for protected conduct, but the same discipline would have been imposed even in the absence of protected conduct, and was based on legitimate business reasons and not discriminatory or retaliatory animus.

**WHEREFORE**, Respondents respectfully request the following relief:

1. Judgment be entered dismissing the Third Amended Complaint on the merits and with prejudice in its entirety; and

2. Directing such other relief as the Board deems just and equitable.

DATED: August 2, 2021

Respectfully submitted,  
PAUL HASTINGS LLP  
CAMERON W. FOX  
J. AL LATHAM, JR.  
SARA B. KALIS  
ERIC DISTELBURGER

By:  \_\_\_\_\_  
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Attorneys for Respondents  
GOOGLE, LLC and  
ALPHABET INC.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20**

---

GOOGLE, LLC and ALPHABET INC., a single employer,

Respondents,

and

EDWARD GRYSTAR, an Individual,

Case Nos.: 20-CA-252802

Charging Party,

and

KYLE DHILLON, an Individual,

20-CA-252902

Charging Party,

and

COMMUNICATION WORKERS OF AMERICA, AFL-CIO,

20-CA-252957

Charging Party,

20-CA-253105

20-CA-253464

and

AMR GABER, an Individual,

20-CA-253982

Charging Party.

---

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2<sup>nd</sup> day of August, 2021, I electronically filed the foregoing **ANSWER TO THIRD AMENDED COMPLAINT AND ANSWER TO AMENDMENT TO THE THIRD AMENDED COMPLAINT** with the National Labor Relations Board using the agency's website ([www.nlr.gov](http://www.nlr.gov)). I also certify that I have served said **ANSWER TO THIRD**

**AMENDED COMPLAINT AND ANSWER TO AMENDMENT TO THE THIRD**

**AMENDED COMPLAINT** via e-mail, where available, and U.S. Mail to the following parties

to this action:

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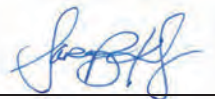
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DATED: August 2, 2021

Respectfully submitted,  
PAUL HASTINGS LLP  
CAMERON W. FOX  
J. AL LATHAM, JR.  
SARA B. KALIS  
ERIC DISTELBURGER

By: \_\_\_\_\_



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Attorneys for Respondents  
GOOGLE, LLC and  
ALPHABET INC.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES**

GOOGLE, LLC and ALPHABET INC., a single employer

and

EDWARD GRYSTAR, an Individual

and

KYLE DHILLON, an Individual

and

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

and

KATHRYN SPIERS, Intervenor

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PAUL DUKE, Intervenor

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REBECCA RIVERS, Intervenor

Cases 20-CA-252802  
20-CA-252902  
20-CA-252957  
20-CA-253105  
20-CA-253464

**ZOOM HEARING INVITATION  
WITH INSTRUCTIONS AND PROTOCOLS**

The parties held an initial prehearing conference on August 20, 2021. Due to the compelling circumstances surrounding the COVID-19 pandemic, all parties agreed that the hearing in the matter will be conducted remotely via the Zoom for Government platform. A final prehearing conference will be held via Zoom on Tuesday August 17, 2021, at 10:00 a.m. A separate Zoom invite will be sent for the prehearing conference.

This is the invitation to the Zoom hearing scheduled to begin on 9:00 a.m. Pacific time on Monday, August 23, 2021. The hearing will take place August 23-26, August 30-September 2, September 7-9, and September 15-17, 2021. Additional days will be added if needed.

Detailed instructions and protocols for joining and participating in or observing the Zoom hearing appear below. *Read and follow them carefully.*

## **I. PARTICIPANTS**

### **A. Zoom Access Links and Numbers**

You will be sent a link to the Zoom hearing via email. If you are asked whether to open with the Zoom app or in the web browser, always choose to open with the Zoom app as this will allow you to participate more fully in the hearing than the browser.

When you enter, select “Join by Computer Audio” even if you are connecting via a smart phone. You will be automatically placed in the Zoom waiting room until admitted to the hearing.

### **B. Instructions and Protocols for the Zoom hearing.**

Audio/Video equipment required. You must have access to a computer, laptop or other device that can transmit and receive audio and video. Both a primary and a secondary device is recommended.

*Primary device:* A computer or laptop is strongly recommended as your primary device. It will provide more functionality and is best for sending and receiving documents.

*Secondary device:* A mobile smart phone or tablet is recommended as a secondary or backup device to maintain communication if technical problems occur during the hearing. For example, if there are audio problems with your computer, you could use it solely for video (by clicking “Leave computer audio” in the Zoom audio settings), and call in with your phone for audio.

Zoom account required. If you do not have a Zoom account, you must create one; it is free. If using a computer or laptop to join the hearing, go to Zoom’s website at [www.zoom.us](http://www.zoom.us), place your cursor over the “Resources” tab in the upper right of the home screen, and select “Download Zoom Client” from the drop-down box. If using a smart phone or tablet, go to the App Store and download the free Zoom app.

Internet connection required. You must have access to a strong and stable internet connection—either wired/ethernet cable (recommended) or wireless/WiFi.

Preparing for the hearing. Take the following steps at least 30 minutes before joining the Zoom hearing:

- 1) *Location.* Set up your computer, laptop, or other primary device in a quiet room or space where you will not be distracted or interrupted.

- 2) *Background.* Make sure there are no uncovered windows or distracting images or messages directly behind you. Virtual backgrounds should also be free of distracting images or messages. Witnesses may not use virtual backgrounds.
- 3) *Power source.* Connect your primary and secondary devices to electrical outlets or portable power sources to ensure they will not run out of battery.
- 4) *Internet.* Test your internet connection. Close any unnecessary applications on your primary device other than Zoom. If using wifi, disconnect other devices, including your secondary device (unless or until needed), from the same wifi network.
- 5) *Camera.* Position the web camera so that it is facing you at or slightly above eye level.
- 6) *Microphone and speaker.* Make sure the microphone is close enough to pick up your voice. And raise the speaker volume so it is loud enough for you to hear others. If you will be using separate devices for video and audio (e.g., a computer for video and a phone for audio), be sure that the microphone and the speaker on the video device are off to prevent audio feedback.
- 7) *Mobile phone notifications.* Set your mobile phone notifications on vibrate only.

Joining the hearing. Join the Zoom hearing at least 5 minutes before the scheduled time using the access link or numbers listed above. Wait in the Zoom waiting room until you are admitted to the hearing by the judge or bailiff. Be patient, it may take a few minutes. If there is an unexpected delay, the judge or bailiff will send a message to the waiting room, which will appear on the waiting room screen.

Participating in the hearing. An unfair labor practice hearing is an official Government legal proceeding. As such, you are expected to abide by the following protocols:

*Decorum and conduct.* Observe rules of decorum, civility, and ethics and show respect for the dignity of the legal proceeding by your conduct, language, and attire.

*Cooperation and compliance.* Cooperate with each other and the court reporter, and comply with the judge's and bailiff's reasonable instructions (e.g., to adjust your position, lighting, or web camera, or to mute or unmute your microphone).

*No videotaping or recording.* No videotaping or audio recording is permitted during any part of the Zoom proceeding, except by the court reporter who is responsible for preparing the official record.

*If you fail to abide by these protocols, you may be removed from the Zoom hearing and/or sanctioned under Sec. 102.177 of the NLRB's Rules and Regulations.*



Party representatives and assistants.

*Forwarding this invitation.* This invitation has been emailed to the parties' counsel or representatives of record only. It is your responsibility to forward it to additional party representatives and assistants who will participate in the hearing and ensure that they understand and follow all the Zoom hearing instructions and protocols.

*Informing the judge or bailiff.* You must inform the judge or the bailiff of the identity of any additional party representatives and assistants as soon as possible so that they will be admitted from the Zoom waiting room in a timely manner.

*Communicating privately during the hearing.* If you need to speak privately with other counsel or your party representatives and assistants during the hearing, you may request the judge or bailiff to create a private Zoom "breakout room" for this purpose.

Court reporter and interpreter. The NLRB Regional Office is responsible for scheduling a court reporter and forwarding this invitation to him/her. If an interpreter is needed for a witness, the party calling that witness is responsible for scheduling the interpreter, either through the NLRB Regional Office or directly, and forwarding this invitation to him/her. The identity of the court reporter and the interpreter should be emailed to the judge or the bailiff before the hearing so that they will be admitted from the Zoom waiting room in a timely manner.

Witnesses. If you will be calling witnesses, you are responsible for the following:

*Invitation.* Providing your witnesses with this invitation.

*Instructions and protocols.* Ensuring that your witnesses understand and follow all the Zoom hearing instructions and protocols set forth in the invitation.

*When to join hearing.* Informing your witnesses when they should join the Zoom hearing and enter the waiting room.

*Witness contact information.* Obtaining a phone number and/or email address to contact the witness in the event communication is interrupted by internet or other technical problems during the hearing.

*Notification to the judge.* Informing the judge or the bailiff of the identity of your witnesses so that they will be admitted from the Zoom waiting room in a timely manner.

*Sequestration.* Informing your witnesses of any sequestration order issued by the judge and ensuring they do not violate it by observing or listening to the Zoom hearing.

Exhibits.

*Formatting exhibits.* Exhibits should be in the following formats:

PDF for documents  
JPG for photographs/images

MP4 for videos

Each exhibit should be separately marked.

*Paginating exhibits.* Exhibits longer than one page must include page numbers, starting with page 1. ***If there are page numbers already imprinted on the original document, and the first page is not page 1 and/or the pagination is not sequential, you will need to repaginate the document, starting with page 1 and continuing sequentially.***

*Sharing exhibits.* With certain exceptions (e.g., Jencks statements and exhibits used to refresh recollection or impeach), the parties are strongly encouraged to distribute as many exhibits to the other parties, the judge, and the witness either before the hearing or before a witness testifies. Options for distributing or sharing exhibits before and during the hearing include:

*Hand delivery/hard copy (before hearing).* This is strongly recommended for witnesses.

*Email (before and during hearing).* This may be used to distribute small and moderate-sized exhibits. However, if used during the hearing, it may take several minutes for everyone to receive the email.

*NLRB Sharepoint webpage (before and during hearing).* This is recommended for exhibits that may be too large to send by email, such as audio and video recordings. An NLRB Sharepoint webpage will be created. Once created, the judge or bailiff will email the Sharepoint link and instructions to all parties. The General Counsel will work with the bailiff to ensure the court reported receives the Sharepoint link and instructions. The parties can exchange exhibits that do not require Sharepoint by email or any other agreed-upon manner.

*Zoom share-screen function (during hearing).* This may be used to share an exhibit, including audio and video recordings, with a witness and other participants during the hearing. Counsel should practice using this function before the hearing. For helpful instructions, see <https://support.zoom.us/hc/en-us/articles/201362153-Sharing-your-screen-in-a-meeting>.

*Providing exhibits to court reporter.* You are responsible for ensuring that your exhibits are provided to the court reporter for inclusion in the official record. The exhibits should be provided by email or uploaded to the NLRB Sharepoint webpage for retrieval no later than the end of the same day they are offered and admitted or the beginning of the next hearing day.

*Redacting sensitive personal identifying information (SPII).* Redact any SPII, including social security numbers, driver's license numbers, and credit card and financial account numbers, from exhibits.

Technical problems. Technical problems (internet, audio, or video delays or interruptions) may occur during the hearing. They usually cause only short delays provided the proper steps are taken.

*Follow the instructions and protocols.* Follow the instructions and protocols above by using a strong and reliable internet connection, having a secondary or backup device to access or communicate with the Zoom hearing or participants if necessary, and emailing your alternative contact information to the judge, bailiff, and/or other participants prior to the hearing. (This information should not be shared orally during the Zoom hearing if it is considered private.)

*Mute your microphone if not speaking or actively participating.* This will help to prevent others from hearing your audio feedback or background noise on their devices.

*Notify the judge or bailiff.* Immediately notify the judge or bailiff if your audio and/or video feed is delayed or otherwise not working properly. You may do so either orally or by signaling with your hands that you are having a problem. The judge or bailiff will try to communicate with and assist you by using the Zoom chat function or by contacting you on your secondary or backup device.

*Reboot your computer.* Often technical problems can be fixed by rebooting your computer or laptop and then re-accessing the Zoom hearing with the same link and numbers. If possible, advise the judge, bailiff, and/or other participants that you will be doing this before leaving the hearing, or as soon as possible thereafter by phone or email if you have already been disconnected from the hearing. You will be re-admitted to the hearing when the judge or bailiff sees that you have re-entered the Zoom waiting room.

## **II. OBSERVERS**

### **A. Zoom Hearing Access by Observers**

Obtaining the Zoom hearing access information. Nonparticipating employees, members, associates, or agents of a party or counsel of record may request a copy of this invitation from any of the parties or counsel or the NLRB Regional Office.

The general public and the media must request the invitation from the NLRB Regional Office. The Regional Office's contact information may be found on the NLRB's website at [www.nlr.gov/about-nlr/who-we-are/regional-offices](http://www.nlr.gov/about-nlr/who-we-are/regional-offices).

Providing identifying information. For security reasons, every observer must provide his/her identifying information—including full name (which must match the Zoom name), email address, and telephone number—to the party, counsel, or NLRB Regional Office that is requested to forward the invitation.

Forwarding the invitation. Unless there is reason to doubt the accuracy of the identifying information provided by the observer, or he/she is a known security risk, the party, counsel, or NLRB Regional Office receiving the request should forward the invitation to the observer's email address.

Notifying the judge or bailiff. Any party, counsel, or NLRB Regional Office that forwarded the invitation to one or more observers should email a list of those observers with their identifying information to the judge or the bailiff at least 24 hours before the hearing.

*No one will be admitted to the Zoom hearing from the waiting room unless his/her identifying information has been provided to the judge or the bailiff by a party, counsel, or the NLRB Regional Office.*

## **B. Instructions and Protocols for Observing the Zoom hearing**

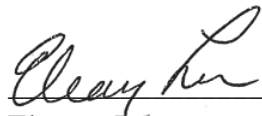
Joining the hearing. Observers may join the Zoom hearing in the same manner and with the same access link or numbers as participants. Like the participants, they will be placed in the Zoom waiting room until they are admitted to the hearing by the judge or bailiff. It may take 15–20 minutes or more, depending on the number of participants (who will be admitted first) and observers, and any technical or other preliminary issues that need to be addressed. If there will be an extended delay, the judge or bailiff will send a message to the waiting room, which will appear on the waiting room screen.

Video and audio output. Observers must have their video and audio output off at all times, both when they join and are admitted from the waiting room and thereafter throughout the hearing. They may not turn on their video or audio output at any time or share messages or images of any kind.

*Violators will be removed and may also be reported to Zoom and appropriate federal authorities for further sanctions.*

SO ORDERED

Dated: July 22, 2021

  
Eleanor Laws  
Administrative Law Judge

*Served by email:*

**For the NLRB**

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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20**

GOOGLE, LLC and ALPHABET INC., a single employer

and

EDWARD GRYSTAR, an Individual

**Cases 20-CA-252802**

and

KYLE DHILLON, an Individual

**20-CA-252902**

and

COMMUNICATIONS WORKERS OF AMERICA, AFL-  
CIO

**20-CA-252957**

**20-CA-253105**

**20-CA-253464**

and

KATHRYN SPIERS, Intervenor

(20-CA-253105;  
20-CA-253464)

and

SOPHIE WALDMAN, Intervenor

(20-CA-252957)

and

PAUL DUKE, Intervenor

(20-CA-252957)

and

REBECCA RIVERS, Intervenor

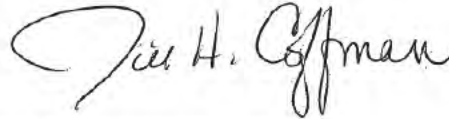
(20-CA-252957)

**ORDER REFERRING PETITION TO REVOKE  
SUBPOENA DUCES TECUM TO ADMINISTRATIVE LAW JUDGE**

A Petition to Revoke Subpoena Duces Tecum A-1-1D81Z7L having been filed with the  
Regional Director on August 18, 2021 by counsel for Respondent,

**IT IS ORDERED**, pursuant to Section 102.31(b) of the Board's Rules and Regulations,  
that the Petition is hereby referred to the Administrative Law Judge for ruling.

Dated: August 18, 2021

A handwritten signature in black ink, reading "Jill H. Coffman". The signature is fluid and cursive, with the first name "Jill" and last name "Coffman" clearly legible.

---

JILL H. COFFMAN  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 20  
901 Market Street, Suite 400  
San Francisco, CA 94103-1738

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20**

**GOOGLE, LLC AND ALPHABET INC., A  
SINGLE EMPLOYER**

**and**

**Case 20-CA-252802**

**EDWARD GRYSTAR, an Individual**

**AFFIDAVIT OF SERVICE OF: Order Referring Petition to Revoke Subpoena Duces  
Tecum to Administrative Law Judge, dated August 18, 2021.**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on August 18, 2021, I served the above-entitled document(s) by **electronic mail** upon the following persons, addressed to them at the following addresses:

Sara Kalis , ESQ.  
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August 18, 2021

Date

Donna Gentry, Designated Agent of NLRB

Name

*/s/ Donna Gentry*

Signature

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20**

COMMUNICATIONS WORKERS OF  
AMERICA, AFL-CIO,

Charging Party,

vs.

GOOGLE LLC and ALPHABET INC., a single  
employer,

Respondents.

**CASE NO. 20-CA-252957, 20-CA-  
253105, 20-CA-253464**

**RESPONDENTS GOOGLE LLC AND  
ALPHABET INC.'S PETITION TO  
REVOKE SUBPOENA AD  
TESTIFICANDUM NO. A-1-1D81Z7L**

**I. INTRODUCTION**

Counsel for the alleged discriminatees has served subpoenas *ad testificandum* for five witnesses at the upcoming hearing. Four of the five subpoenas present no issue. But the fifth subpoena<sup>1</sup> – which seeks live hearing testimony by Google’s Chief **Legal** Officer, Kent Walker – is improper and should be revoked for two reasons.

First, Mr. Walker was not a participant in (or even a witness to) any of the disciplinary decisions at issue. He has no connection to this case, aside from his name coming up in the context of a 2019 prank led by alleged discriminatee Kyle Dhillon. Specifically, Dhillon and others helped create a way for Google employees to have their computers send an automatically-generated email alert to Mr. Walker’s company email address every time that each employee opened any internal Google document. Dhillon was not disciplined (nor was anyone else) – the prank did not violate Google policy. Mr. Walker was not involved in the investigation, or any decisions regarding Google’s response to the prank. *See* Declaration of Kent Walker, attached as Exhibit A. Against this background, there is no basis for subpoenaing him to testify.

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<sup>1</sup> Subpoena *Ad Testificandum* No. A-1-1D81Z7L was issued and served on August 10, 2021. A copy is attached as Exhibit B.

Second, Mr. Walker's role is that of legal counsel (he is the most senior attorney in the company). To the extent he has knowledge about this case more generally, his thoughts, analyses, and mental impressions are attorney work product, and his internal communications about this case are privileged. In light of that, he is not the kind of witness who can, or should, be forced to appear for an examination that is likely to become a fishing expedition.

For both of these reasons, the subpoena should be revoked.

## **II. ARGUMENT**

### **A. Mr. Walker Had No Involvement in the Disciplinary Decisions at Issue In This Case; There Is No Basis For Subpoenaing Him To Testify**

This case is about Google's disciplinary decisions in response to the behavior of six former and current employees: Paul Duke, Rebecca Rivers, Sophie Waldman, Kathryn Spiers, Kyle Dhillon and Eddie Grystar. Mr. Walker had no involvement in any of those decisions. That was established long ago by the thousands of pages produced by Google during this case, which show the names of those who were involved. (Mr. Walker is not named even once.) Mr. Walker's lack of involvement is now further established by his Declaration. (Exhibit A.) On this record, there is no basis for his testimony to be subpoenaed.<sup>2</sup>

Notably, Counsel for the General Counsel realized quickly that Mr. Walker was not needed as a trial witness, and chose not to subpoena him – opting instead for a simple stipulation as to Mr. Walker's receipt of the prank emails described above. Counsel for alleged discriminatees knows of that stipulation, and Google has offered to consider additional factual stipulations that can obviate the need for Mr. Walker to appear. As of the date of this filing, counsel for the alleged discriminatees has not identified any fact that supposedly needs to be established through Mr. Walker, and yet also refuses to withdraw the subpoena.

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<sup>2</sup> Under 29 C.F.R. § 102.31(b), a subpoena should be revoked if “the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings ....”

**B. To The Extent Mr. Walker Knows Anything About This Matter, It Is In His Role As Legal Counsel; His Knowledge And Internal Communications About This Matter Are Absolutely Privileged**

Given Mr. Walker’s lack of involvement in any of the underlying events, his only knowledge of this case comes from his role as the company’s legal counsel – specifically, through his privileged communications with other Google attorneys and members of Google management, and as a function of his own analyses and mental processes, which are attorney work product. Mr. Walker cannot be required to divulge either one at this hearing.

As a threshold matter, it is well-established that the attorney-client privilege applies to “in-house” counsel just as it would to any other attorney. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 154 (1974). The Board recognizes the attorney-client privilege as “fundamental,” noting that “[w]ithout the protection afforded by this privilege, the open communication necessary for accurate and effective legal advice would be virtually impossible.” *Smithfield Packing Co.*, 344 NLRB 1, 13 (2004), *enf.* 447 F.3d 821 (DC Cir. 2006). The purpose of the attorney-client privilege is to ensure and encourage complete disclosure of information and communication between counsel and clients, promoting the ultimate observance of the law and administration of justice, and protecting the ultimate broader public interest at stake. *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981) (“The attorney–client privilege is the oldest of the privileges for confidential communications known to the common law.”)

Federal law is clear that “[a] subpoena may not be used by a party to obtain privileged information.” 9A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, *FEDERAL PRACTICE AND PROCEDURE* § 2458 (3d ed. 2008). As a result, privilege is one of the established bases for seeking revocation of a subpoena. *NLRB v. Interbake Foods, LLC*, 637 F.3d 492, 497 (4th Cir. 2011) (the reasons for subpoena revocation “include not only those that are immediately apparent on a subpoena’s face but also those that can be determined through reference to authority, for instance the evidentiary rules of *privilege*”) (emphasis added). *See also*, 29 C.F.R.

§ 102.31(b) (a subpoena should be revoked “if for any other reason sufficient in law the subpoena is otherwise invalid”).

Mr. Walker was Google’s Chief Legal Officer for all of the time periods at issue in this case, and still occupies that role today. As such, efforts to force him to testify are subject to the so-called “Shelton test,” which was first set out in *Shelton v. Am. Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1986). Under *Shelton*, legal counsel should only be called to testify under limited circumstances in which “the party seeking to [call the attorney as a witness] has shown that (1) no other means exist to obtain the information than to [subpoena] opposing counsel; (2) the information sought is relevant and nonprivileged; **and** (3) the information is crucial to the preparation of the case.” *Id.* (citations omitted) (emphasis added); *see also M.A. Mobile Ltd. v. Indian Inst. of Tech. Kharagpur*, 2014 U.S. Dist. LEXIS 26376, at \*6 n.1 (N.D. Cal. Feb. 28, 2014) (“the *Shelton* test is widely accepted in this district”); *Natural Alternatives Int’l, Inc. v. Creative Compounds, Inc.*, 2016 U.S. Dist. LEXIS 175231 (S.D. Cal. Dec. 16, 2016) (“our district has routinely applied the [*Shelton*] test to situations where, as here, a party seeks to take the deposition of opposing counsel”); *Stevens v. Corelogic, Inc.*, 2015 U.S. Dist. LEXIS 165874 (S.D. Cal. Dec. 10, 2015) (“courts in this district and elsewhere in the Ninth Circuit recognize *Shelton* ... and follow the three-factor test laid out in the case.”).

None of the three circumstances required under *Shelton* is present here, let alone all of them. Moreover, the fact that counsel for the alleged discriminatees insists on Mr. Walker’s live testimony despite Google’s offer to enter into an appropriate factual stipulation (as Google already has done with counsel for the General Counsel) speaks volumes about the intent behind this particular subpoena. *See Shelton*, 805 F.2d at 1330, fn. 7 (several factors supported the argument that plaintiffs’ counsel was attempting to discover opposing counsel’s mental impressions on the case, including their rejection of the company’s offer to establish facts through other methods that would not run the risk of invading privilege).

### III. CONCLUSION

As shown above, the subpoena *ad testificandum* issued to Mr. Walker has no legitimate purpose – it does nothing more than create opportunities to try to invade Google’s attorney-client privileged communications and attorney work product. Google requests that the subpoena be revoked in its entirety pursuant to 29 C.F.R. § 102.31(b).

DATED: August 17, 2021

Respectfully submitted,  
PAUL HASTINGS LLP  
CAMERON W. FOX  
J. AL LATHAM, JR.  
SARA B. KALIS  
ERIC DISTELBURGER

By: \_\_\_\_\_

  
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Attorneys for Respondents  
GOOGLE LLC and ALPHABET INC.


**EXHIBIT A**  
**DECLARATION OF KENT WALKER**

I, Kent Walker, do hereby declare and state as follows:

1. I have personal, first-hand knowledge of the facts set forth in this declaration and, if called upon to do so, I could and would testify competently to them.
2. I make this Declaration in support of Respondents Google LLC and Alphabet Inc.'s petition to revoke Subpoena *Ad Testificandum* No. A-1-1D81Z7L.
3. I am the Chief Legal Officer and Senior Vice President of Global Affairs for Google. I have held those titles since 2018, before which I served as General Counsel.
4. I was not involved in the investigations of, or the disciplinary decisions related to, Sophie Waldman, Paul Duke, Rebecca Rivers, Laurence Berland, Kathryn Spiers, Eddie Grystar, or Kyle Dhillon. All knowledge that I have regarding those individuals, and regarding this case, comes from privileged communications and my own analysis, as part of my role as the company's legal counsel.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 16th day of August 2021 at Palo Alto, California.



---

Kent Walker

## EXHIBIT B

### Subpoena Ad Testificandum No. A-1-1D81Z7L

**Kalis, Sara**

---

**From:** I burgess <lburgess@burgess-laborlaw.com>  
**Sent:** Tuesday, August 10, 2021 12:52 PM  
**To:** Kalis, Sara  
**Subject:** [EXT] Subpoenas  
**Attachments:** Google witness Subpoena.pdf

Sara - per our discussion over the weekend, attached please find subpoenas for Kent Walker, Brad Fuller, Stephen King, Heather Adkins and Thomas Kurian.

Many thanks,  
Laurie

Laurie M. Burgess, Attorney  
(312) 320-1718 (cell)

This communication, along with any attachments and contents, is the property of attorney Laurie M. Burgess and may contain legally privileged and confidential information for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of any information contained or attached to this communication is strictly prohibited. If you have received this in error, please notify the sender immediately and destroy the original communication and its attachments without reading, printing or saving in any manner. We do not waive attorney-client or work product privilege by the transmission of this message.



**SUBPOENA****UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD**To Kent Walker 201 Spear Street, San Francisco, CA 94105As requested by Laurie M. Burgesswhose address is 498 Utah Street, San Francisco CA 94110  
(Street) (City) (State) (ZIP)YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge  
of the National Labor Relations Boardat Natalie P. Allen Memorial Courtroom, 901 Market Street, Suite 400  
San Francisco, California, or method or means, including videoconference, directed by the  
in the City of Administrative Law Judge.on August 23, 2021 at 9:00 AM or any adjournedGoogle, LLC and Alphabet Inc., a single employer  
or rescheduled date to testify in 20-CA-252802, et al.

(Case Name and Number)

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings) and 29 C.F.R. Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

**A-1-1D81Z7L**

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at San Francisco, CADated: July 23, 2021A handwritten signature in cursive script that reads "Lauren McFerran".  
Lauren McFerran, Chairman

**NOTICE TO WITNESS.** Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of August, 2021, I electronically filed the foregoing **RESPONDENTS GOOGLE LLC AND ALPHABET INC.'S PETITION TO REVOKE SUBPOENA AD TESTIFICANDUM NO. A-1-1D81Z7L** with the National Labor Relations Board using the agency's website ([www.nlr.gov](http://www.nlr.gov)). I also certify that I have served said **RESPONDENTS GOOGLE LLC AND ALPHABET INC.'S PETITION TO REVOKE SUBPOENA AD TESTIFICANDUM NO. A-1-1D81Z7L** upon the following parties, via e-mail, pursuant to NLRB Regulation 11846.4(b):

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DATED: August 17, 2021

Respectfully submitted,  
PAUL HASTINGS LLP  
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J. AL LATHAM, JR.  
SARA B. KALIS  
ERIC DISTELBURGER

By: \_\_\_\_\_



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Attorneys for Respondents  
GOOGLE LLC and  
ALPHABET INC.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES**

GOOGLE, LLC and ALPHABET INC., a single employer

and

EDWARD GRYSTAR, an Individual

and

KYLE DHILLON, an Individual

and

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

and

KATHRYN SPIERS, Intervenor

and

SOPHIE WALDMAN, Intervenor

and

PAUL DUKE, Intervenor

and

REBECCA RIVERS, Intervenor

Cases 20-CA-252802  
20-CA-252902  
20-CA-252957  
20-CA-253105  
20-CA-253464

**ORDER RE: PRODUCTION OF SUBPOENAED DOCUMENTS**

On August 19, 2021, the parties participated in a Zoom videoconference with the undersigned to address any outstanding matters regarding documents counsel for the alleged discriminatees in this matter had subpoenaed from the Respondent. The matter was resolved, with the only outstanding issue remaining whether the Respondent would be able to produce the documents in a manner that would match the documents to the request by the end of the week. In other words, the timing of the Respondent's ability to match up the documents was the only

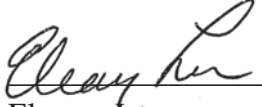
outstanding matter. I have since been informed that the dispute may or may not be broader than one of timing.

Although not binding on the Agency, the Federal Rules of Civil Procedure also provide “useful guidance” and “should be consulted.” *Brink’s, Inc.*, 281 NLRB 468 (1986). FRCP 34(E)(i) states that the party producing the documents “must organize and label them to correspond to the categories in the request.” See also *San Luis Trucking*, 352 NLRB 211, 212 (2008), reaff’d. 356 NLRB 168 (2010) (imposing evidentiary sanctions where respondent made 2471 boxes of documents “available” to the General Counsel the afternoon before the hearing, without producing the requested documents in the form required by FRCP 34 and 45 at the hearing, despite the judge’s denial of respondent’s petition to revoke at the outset thereof), enfd. without addressing the sanctions issue 479 Fed. Appx. 743 (9th Cir. 2012).

At the time this order was served, it appears the parties were working to resolve any outstanding matters. In any event, should a dispute arise, the above rules and caselaw apply.

SO ORDERED

Dated: August 20, 2021

  
\_\_\_\_\_  
Eleanor Laws  
Administrative Law Judge

*Served by email:*

**For the NLRB**

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**For the Charging Party**  
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Patricia M. Shea, Esq.  
pats@cwa-union.org

**DiCrocco, Brian**

---

**From:** DiCrocco, Brian  
**Sent:** Friday, August 20, 2021 3:56 PM  
**To:** McPalmer, Richard; Clark, Tracy; lburgess@burgess-laborlaw.com; Kalis, Sara; Eric Distelburger; cameronfox@paulhastings.com; allatham@paulhastings.com; pats@cwa-union.org  
**Cc:** Gomez, Doreen E.  
**Subject:** Google, LLC and Alphabet Inc., a single employer - 20-CA-252802 :  
**Attachments:** Order Re Production of Documents Google.pdf

Dear Counsel,

Please see the attached document.

**Brian C. DiCrocco, Legal Tech.**  
**NLRB Division of Judges San Francisco**  
**628-221-8821**



**BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20**

COMMUNICATIONS WORKERS OF	)	CASE NOS. 20-CA-252957,
AMERICA, AFL-CIO, et al	)	20-CA-253105, 20-CA-253464
	)	
Charging Party,	)	INTERVENERS' RESPONSE TO
	)	GOOGLE'S PETITION TO REVOKE
vs.	)	SUBPOENA <i>AD TESTIFICANDUM</i>
	)	NO. A-1-1D81Z7L (Kent Walker)
GOOGLE LLC and ALPHABET INC., a	)	
single employer,	)	Hon. Judge Eleanor Laws
	)	
Respondents.	)	

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**I. INTRODUCTION**

It would appear, after reading Google's Petition to Revoke the Subpoena *ad Testificandum* issued to Kent Walker, that Google is litigating an entirely different case from the one that the General Counsel and the Interveners are litigating. Google's statement of "facts" is wildly inaccurate as are its legal conclusions. Kent Walker – Google's chief legal counsel – is the one person in this matter who was an active participant in triggering all of the underlying actions that led to the termination of each Discriminatee in this matter. Walker is the single thread that runs through the entire consolidated complaint.

Nor is Walker a mere passive observer in this matter – the "butt of a joke" or prank – as Google suggests. Instead, the Record evidence that is available to Interveners thus far<sup>1</sup> demonstrates that Walker used his power and prestige as Chief Legal Counsel as

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<sup>1</sup> As of Sunday, August 22, 2021, noon (Pacific) Interveners have not received any response to their July 28, 2021 subpoena. Google did provide Interveners with a massive "document dump" on Friday, August 20, 2021, which appears to be similar to the "production" that it issued to Region 20 in response to its own trial subpoena. However, this "production" is a massive



a sword to malign the Discriminatees and he now seeks to yield that same power as a shield against being compelled to testify regarding his actions. But the shield offers no more protection than the Emperor's new clothes because Walker's communications maligning the Discriminatees was made publicly to all Google employees via its "Community Guidelines" blog and was broadly shared with the entire public at large. By speaking publicly about his rationale for investigating and ultimately terminating the employment of the Discriminatees, Walker voluntarily waived any and all privileges he or Google may have held regarding these matters. As is demonstrated below, the Interveners are unquestionably entitled to examine Walker's role in the unlawful termination of their employment and in maligning their character and reputation in the community at large.

### **PROCEDURAL HISTORY**

On Friday, August 6, 2021, counsel for the Interveners (Burgess) sent counsel for Google (Kalis) an email reminding Kalis of Burgess' intent to subpoena several Google employees – including Kent Walker – to testify at the Hearing in this matter and of Kalis' voluntary offer to accept the subpoenas on the employees' behalf. A true and accurate copy of that email communication is attached hereto as **Exhibit A**. In that email Burgess acknowledged that the counsel for General Counsel ("GC") may have separately subpoenaed some or all of these individuals (the GC has never shared its subpoena *ad testificandum* with Burgess) but that Burgess wished to preserve the right to call these individuals in her case in chief. *Id.* Burgess also offered to cooperate with Kalis regarding the timing for calling these witnesses and also stated that she might be able to

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document dump that makes no attempt to properly segregate documents in any comprehensible manner.

limit the list of witnesses depending upon what Burgess learned from receiving discovery responses from Google which Burgess expected to be provided imminently. *Id.*

In that email communication, Kalis represented that the GC had agreed to refrain from calling Google witnesses during its case-in-chief and instead would wait for Google to call these witnesses first. *Id.* Burgess confirmed that she was not party to that agreement and planned to call Google witnesses in her case in chief. *Id.* No other discussion – orally or in writing – occurred between Burgess and Kalis regarding this matter until Kalis filed her Petition to Revoke on August 17, 2021. Kalis never asked Burgess why she was calling Walker as a witness and never asked to discuss the timing or scope of the testimony that Burgess intended to elicit from Walker. Nor has Kalis or the GC shared any alleged “stipulation” regarding Walker’s testimony described in (PTR at 2) with Burgess including through and including today’s date (August 21, 2021) and Burgess remains unaware that any such stipulation referred to in Google’s PTR exists.

### **STATEMENT OF FACTS**

Google’s statement of facts implies that Kent Walker’s sole involvement in this matter was in connection to what Google now characterizes as a “prank” that led to “no discipline” of Kyle Dhillon (the originator of the “prank”) or others who participated in creating the “prank,” and that the “prank” itself “did not violate Google policy.” In fact, however, Google coercively and unlawfully interrogated Dhillon and other discriminatees regarding this “prank” and expressly include a recap of Dhillon’s involvement in this “prank” in the “FINAL WARNING” it issued to Dhillon on January 6, 2020. (See **Exhibit B**). If Google is now conceding that its coercive interrogation of Dhillon over this “prank” and its inclusion of this incident in the FINAL WARNING it issued him was

improper, Interveners will gladly consider a stipulation from Google admitting as much.

But Walker's involvement in the consolidated complaints goes well beyond serving as the recipient of the "prank" emails that Dhillon enabled fellow employees to send him. Indeed, Walker's involvement is self-evident from the face of the Complaint. He is specifically identified as the Google agent ("Unnamed agent #2") involved in the Complaint allegations ¶¶ 8, 9, 10, and 17.

One of the core allegations in the amended Complaint concerns Google's conduct of issuing new "data classification" policies regarding what Googlers – who were historically encouraged to peruse its massive data-base "MOMA" to look at absolutely any material contained therein that was not clearly marked in bold red letters "CONFIDENTIAL" – to a new system with undefined amorphous parameters. Kent Walker issued the announcement regarding this change in policy on May 9, 2019.

Googlers objected to these new standards and sought clarification regarding the intent and application of this new "policy" fearing – correctly – that in the absence of such clarification, the policy would be used to discriminatorily discipline or terminate the employment of Googlers who e.g. were engaged in union organizing campaigns and other concerted protected activity. Complaint ¶ 12, (**Exhibit C**).<sup>2</sup> They were correct. Terminated discriminatees Rivers, Waldman, Duke and Berland<sup>3</sup> were surveilled, coercively interrogated and terminated for looking at documents in MOMA that pertained to workplace conditions that they were concerned about. Complaint ¶ 9. Specifically,

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<sup>2</sup> **Exhibit C** consists of "memes" which are images (photos, cartoons, drawings) with (frequently clever or ironic) statements on them. Googlers were able to post their thoughts about Google policies via "memegen." **Exhibit C** contains a sampling of memes that Googlers submitted regarding their concerns over Walker's new community guidelines and the implementation of those guidelines to discriminatorily target employees engaged in concerted protected activity.

<sup>3</sup> Berland is no longer a charging party in this matter.

they became aware that Google was surreptitiously planning to contract with the government to provide services that would enforce then President Trump's border control policies. Complaint ¶ 15(a)(f). Googlers believed that this action was contrary to Google's motto and contractual mandate "Don't be evil" and to call out Google if they believed Google was engaged in "evil." See Complaint ¶ 15 (b)-(h). The Googlers were also well aware that the implementation of these policies would impact the hundreds if not thousands of their fellow immigrant co-employees and the families of such employees. *Id.* In each instance, the documents that the terminated discriminatees reviewed were not marked either as "confidential" or "Need to Know" ("NTK") materials. *Id.* Instead, they all reviewed materials that were readily available and accessible to any Google employee who wished to find them in MOMA. *Id.* Two employees – Berland and Rivers – were placed on administrative leave in response to their conduct of looking at materials that were not marked "NTK" – triggering others, including Duke and Waldman – to actively coordinate protests against this action.

In response to the mounting concerns among Googlers – both regarding Google's involvement in enforcing Trump's border control policies and regarding the change in Google's "classification" policy – on November 12, 2019, Kent Walker issued a company-wide statement asserting – falsely – that Rivers "deliberately searched for and share a number of confidential or need to know documents . . . after receiving prior feedback not to do so." (**Exhibit D**). He also stated that these documents "subsequently appeared in the press" – insinuating that Rivers was responsible for leaking documents

that should only be shared internally.<sup>4</sup> *Id.* Finally, Walker stated that the conduct that Rivers engaged in has “never been tolerated” at Google – again, falsely implying that Rivers had engaged in gross misconduct. *Id.* Walker also spoke in detail about his view of the terminations during a company-wide Q&A session. (**Exhibit E**).

Googlers held a rally in support of Rivers and Berland (who was also maligned in Walker’s 11/12/19 public statement) and on the next business day after the rally, the Monday of Thanksgiving week, Duke and Waldman, along with Rivers and Berland were terminated.

Discriminatee Grystar organized the aforementioned rally and drafted numerous statements raising concerns about these actions and questioning Google’s new “policy” in which Googlers were expected to somehow know that they could be terminated for looking at documents not marked “confidential” or “NTK.” *See, e.g. go/concerns-about-data-classifications-policies* and *go/concerns-about-data-classifications-policies-form* and Consolidated Complaint allegations ¶17(a), (b), and in response he and others were coercively interrogated about these actions. Complaint ¶8. Given the uncertainty and fear among Googlers regarding what (unmarked) documents they could now be terminated for looking at, Discriminatee Dhillon wrote a document suggesting that Googlers “always ask Kent [Walker]” prior to viewing any document that they were uncertain about viewing. Dhillon and Spiers ultimately turned the “always ask Kent” concept into a program (“chrome extension”) that would enable Googlers to actually send Kent Walker an email asking whether a specific document not marked as “NTK” would be *post facto*

---

<sup>4</sup> In fact, Rivers had brought to Google’s attention that one meme that arose out of discussion regarding border control issues, appeared to violate Google’s policies regarding appropriate memes. Google refused to take down the meme that Rivers flagged as inappropriate and refused to tell her why. Rivers then sought documents that would explain Google’s meme take-down process. She was terminated for conducting that search. Complaint ¶16.



characterized by Google as “NTK” material and hence be terminated for viewing.

Complaint ¶¶ 9, 10, 17 (b)(c). It is this “always ask Kent” chrome extension that Google represents in its PTR that is the “only” matter in which Kent Walker was involved.

In furtherance of concerns regarding Google’s use of Walker’s new Community Guidelines that Discriminatee Spiers wrote a chrome extension that created a tiny “pop up” on Googlers’ computer screen reminding them – if they conducted research into the role of IRI, the union-busting firm that Google had just hired – that they had rights under Section 7 of the NLRA to engage in concerted protected activity. Spiers was terminated for this activity, Dhillon, who provided only a mechanical technical review of the chrome extension was given a “FINAL WARNING” for his role in this activity and Grystar, who only reviewed the computer language of the chrome extension was likewise disciplined for his scant “involvement” in this activity.

Thus, contrary to Google’s representation, virtually all of the unlawful activity alleged in the Complaint arise from the same *res gestae* and Kent Walker is a primary, if not *the* primary Google agent at the center of these allegations. It is in this context that we request the ALJ to review Google’s pending PTR.

### **LEGAL ARGUMENT**

Google’s legal argument for revoking the Walker subpoena is based upon two cornerstones: (1) that as Google’s in-house counsel, Walker deserves the fundamental protection afforded to attorney-client privilege; and (2) any assessment regarding the Intervener’s right to call Walker as a witness is governed by *Shelton v. Am. Motors Corp.*, 805 F.2d 1323, 1327 (8<sup>th</sup> Cir. 1986). Each of these legal premises is misplaced. Its arguments – built on a house of cards – fails to demonstrate any basis for revoking the

Intervener's legitimate and fully enforceable subpoena.

**A. In-House Counsel Is Not Entitled to a Rebuttable Presumption of Attorney-Client Privilege**

Google represents in the introduction to its legal argument that “[t]he attorney-client privilege applies to ‘in-house’ counsel just as it would to any other attorney. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 154 (1974). This is not accurate; where a corporation takes the step of retaining outside counsel, the nature of the relationship creates a rebuttable presumption that the law firm’s services were secured for the purpose of obtaining legal advice and in the absence of waiver would generally be privileged and protected.<sup>5</sup> Because in-house counsel plays many roles, the same presumption does not apply. As (then) Circuit Judge Ginsburg explained, communications between the corporation and its in-house counsel are privileged “only upon a clear showing that [the advice] was given in a professional legal capacity.” *In re Sealed Case*, 737 F.2d 94, 99 (D.C. Cir. 1984). Applying the “presumption” of privilege to an in-house attorney as Google asks the Judge to do here, constitutes reversible error. *United States v. Chevron Corp.*, No. C-94-1885 SBA, 1996 U.S. Dist. LEXIS 4154, at \*9-10 (N.D. Cal. Mar. 13, 1996).

Given the ambiguous role of in-house “counsel,” Courts and legal scholars alike have taken a critical view of corporations relying upon privilege to suppress relevant information pertaining to a corporation’s alleged unlawful conduct. *See B.F.G. of Ill., Inc. v. Ameritech Corp.*, No. 99-C-4604, 2001 U.S. Dist. LEXIS 18930, at \*6 (N.D. Ill. Nov. 13, 2001) (criticizing the defendants’ “use of in-house counsel to give a veneer of

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<sup>5</sup> Even in such circumstances, where, as here, the privilege is waived, outside counsel can be compelled to testify regarding otherwise privileged communications. *See, e.g. Community Learning Center Schools, Inc.* (2017) PERB Order No. Ad-448 at pp. 14-15 (interpreting California State law and the Employment Education Relations Act).

privilege to otherwise non-privileged business communications”); John E. Sexton, *A Post-Upjohn Consideration of the Corporate Attorney-Client Privilege*, 57 N.Y.U. L. REV. 443, 446 (1982) (the privilege’s “staunchest proponents concede that, whenever the privilege is invoked, otherwise relevant and admissible evidence may be suppressed . . . [and] potentially hinders the administration of justice.”).

Google has failed to sustain its burden of providing a “clear showing” that when Walker, as in-house counsel, made these comments or participated in effectuating actions that led to the Discriminatees’ termination is entitled to attorney-client privilege at all. Its failure to sustain this burden is inexcusable since Google has ventured down this path before and has had its in-house counsel “privilege” arguments flatly rejected. *See In Re Google, Inc.* 462 Fed.Appx. 975, 978 (Fed. Cir. 2012)(a “clear showing” that in-house counsel was acting in legal capacity is required even where in-house counsel plays no distinct nonlegal roles for the Corporation).

**B. The “Flexible Assessment” Approach Which Supersedes *Shelton* in Assessing the Right to Subpoena Counsel Firmly Supports Interveners’ Right to Subpoena Walker’s Testimony.**

As noted in the Introduction Section *infra.* at 7, Google insists that under *Shelton v. Am. Motors Corp.*, 805 F.2d 1323, 1327 (8<sup>th</sup> Cir. 1986) Walker cannot be compelled to testify unless Interveners demonstrate that (1) no other means exist to obtain the information than to [subpoena] opposing counsel; (2) the information sought is relevant and non-privileged; and (3) the information is crucial to the preparation of the case. Google then offers the *non sequitur* that since it has produced no documents indicating that Walker had a role in deciding or effectuating the Discriminatees’ termination, Walker knows nothing and therefore Interveners have no basis for subpoenaing his



testimony. (PTR at 2). True enough – to date, Google has provided no written documentation that explains the rationale for Walker’s false and/or grossly misleading assertion that the Discriminatees violated company policy. But that does not mean that Walker “knows nothing.” On the contrary, Walker asserted both orally and in writing that the Discriminatees in this matter violated company policy. *See e.g.* Kent Walker’s November 12, 2019 blog on the Google-wide Community Guidelines platform (**Exhibit D**) and portions of his statements in response to a Google-wide Q&A session (**Exhibit E**).

Thus, taking Google’s counsel at their word – i.e. that “no documents exist” that record, mention or describe the basis for Walker’s false/misleading statements (PTR at 2), Google has effectively conceded that at least one of the three *Shelton* criteria for requiring counsel to testify has been met, namely that no other means (such as document production) exists to discover the basis for Walker’s false and misleading statements. The only avenue available to Interveners for finally learning the basis for Walker’s false statements is to call him to testify about this subject.

Separately, as Google’s counsel should know, the “*Shelton*” analysis that Google asks the Judge to rely upon has never been accepted as the majority approach for determining when counsel may be called to testify in a matter. As (then Circuit Judge) Sotomayor noted in *In re Subpoena Issued to Dennis Friedman*, 350 F.3d 65, 69 (2d Cir. 2003), only the Sixth Circuit followed the Eighth Circuit’s *Shelton* analysis. In rejecting the *Shelton* rule and instead applying a “flexible approach” to this determination (then) Circuit Judge Sotomayor explained:

The deposition-discovery regime set out by the Federal Rules of Civil Procedure is an extremely permissive one to which courts have long "accorded a broad and liberal treatment to effectuate their purpose that civil trials in the federal courts [need not] be carried on in the dark." *Schlagenhauf v. Holder*, 379 U.S. 104, 114-15, 85 S.Ct. 234, 13 L.Ed.2d 152 (1964) (quoting *Hickman v. Taylor*, 329 U.S. 495, 501, 507, 67 S.Ct. 385, 91 L.Ed. 451 (1947) (internal quotation marks omitted)). Indeed, the rules provide for the taking of discovery, including by oral depositions, "regarding *any* matter, not privileged, that is relevant to the claim or defense of *any* party" and that "[r]elevant information need not be admissible." See Fed.R.Civ.P. 26(b)(1) (emphasis added). Moreover, the rules generally do not place any initial burden on parties to justify their deposition and discovery requests. See, e.g., Fed.R.Civ.P. 30(a)(1) ("A party may take the testimony of *any person* . . . by deposition upon oral examination without leave of court.") (emphasis added); Fed.R.Civ.P. 26(c) (permitting courts to issue a protective order upon "good cause shown" by the party *opposing* discovery).

*In re Subpoena Issued to Dennis Friedman*, 350 F.3d 65, 71 (2d Cir. 2003). In *Shelton*, the defendant relented and agreed to voluntarily produce counsel for examination while the case was pending. But the "flexible" and more permissive approach to assessing whether counsel may be called to testify in a matter – one that "takes into consideration all of the relevant facts and circumstances" including "the need to depose the lawyer, the lawyer's role in connection with the matter on which discovery is sought and in relation to the pending litigation, the risk of encountering privilege and work-product issues, and the extent of discovery already conducted" – is the clear majority approach, not *Shelton*.

Here, numerous facts and legal argument mitigate in favor of requiring Walker to appear to testify at the hearing. First, and most obviously, Walker has waived any privilege that might have attached to his alleged attorney/client communications regarding the termination of the Discriminatees by prominently, publicly and broadly discussing his assertion that the Discriminatees violated company policy (**Exs. D, E**). Irrespective of what "hats" he wears/wore as Google legal counsel, by sharing his opinion

and beliefs on this issue. Walker knowingly waived any privileged discussions concerning these matters.

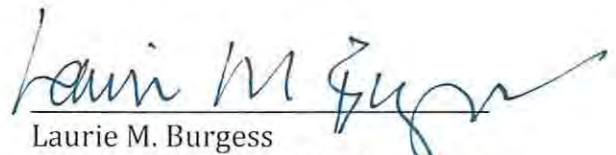
In the Declaration that Google attached to its PTR Walker swears under oath that “all knowledge that I have regarding [the discriminatees] and regarding the case comes from privileged communications and my own analysis as part of my role as the company’s legal counsel.” Again – taking him at his word – because Walker provided detailed written and oral statements to all Google employees regarding Google’s purported legitimate rationale for terminating the Discriminatees, all of the purported “privileged communications” and his analysis has been lost whatever privilege it would have had as a result of these detailed voluntary disclosures.

The Discriminatees dispute that they violated any company policies and indeed, in some instances they were told during Google’s investigative interview of them that they had not violated any policies. Yet Walker told all Google employees orally and in writing that these individuals violated company policies – simultaneously irrevocably tarnishing the reputations of the terminated employees chilling other employees from engaging in concerted protected activity for fear of receiving similar unjustified reprobation. Walker’s statements hence trigger examination under the “crime fraud” exception to the attorney-client privilege. The crime-fraud exception was established more than 100 years ago in *Alexander v. United States*, 201 U.S. 117 (1906) and has been interpreted to cover communications between an attorney and client that further a crime, tort or fraud. *See also Wigmore on Evidence* at § 2298. The NLRB has held that the crime/fraud exception may be raised in cases under the NLRA but has not held that the exception applies to violations of the NLRA. *Patrick Cudahy Inc.* 288 NLRB 968, 973.

However, here, separate from an 8(a)(1) violation Walker's actions potentially give rise to the tort of "false light" (public statement that is highly offensive and implied to be true but is actually false) and/or defamation (false statement of fact that injures one's reputation) – matters that *are* captured under the crime/fraud exception.

Finally, as the ALJ is well aware, Interveners are not privy to discovery mechanisms that exist under State and Federal Rules; instead, they are relegated to issuing subpoenas to compel production of documents and/or of witnesses at trial. Even absent "normal" discovery rights, Interveners are well aware that Kent Walker played a critical role in determining and publicly announcing that the Discriminatees purportedly violated company policy. The Interveners are entitled to question Walker about the basis of these false claims and respectfully request that the Judge DENY its pending Petition to Revoke the Subpoena of Kent Walker.

Respectfully submitted,

A handwritten signature in blue ink, reading "Laurie M. Burgess", with a long, sweeping horizontal line extending to the right.

Laurie M. Burgess  
lburgess@burgess-laborlaw.com  
Burgess Law Offices  
498 Utah St.  
San Francisco, CA 94110  
(312) 320-1718

Dated: August 22, 2021

# Exhibit A



I burgess <lburgess@burgess-laborlaw.com>

---

**(no subject)**

1 message

---

I burgess <lburgess@burgess-laborlaw.com>

Sat, Aug 21, 2021 at 8:19 AM

To: I burgess <lburgess@burgess-laborlaw.com>

From: I burgess <lburgess@burgess-laborlaw.com>

Date: Sun, Aug 8, 2021 at 2:09 PM

Subject: Re: Subpoena ad testificandum

To: Kalis, Sara <sarakalis@paulhastings.com>

Cc: Fox, Cameron W. <cameronfox@paulhastings.com>, Latham, J. Al <allatham@paulhastings.com>

Sara - it's difficult to give an estimate at this time. I'll have a much better sense of timing, etc. once we receive your discovery responses.

Thanks,  
Laurie

Sent from my iPhone

On Aug 8, 2021, at 5:32 AM, Kalis, Sara <sarakalis@paulhastings.com> wrote:

Laurie,  
Thank you for clarifying. For timing purposes, how long do you anticipate your case will take?  
Thanks,  
Sara

Sara Kalis  
Paul Hastings  
sarakalis@paulhastings.com  
952-240-4558

On Aug 7, 2021, at 5:44 PM, I burgess <lburgess@burgess-laborlaw.com> wrote:

Thanks, Sara. It's my intent to call Google witnesses during my case in chief.

Sent from my iPhone

On Aug 7, 2021, at 1:00 PM, Kalis, Sara <sarakalis@paulhastings.com> wrote:

Laurie,

Thank you for your email. Google will accept service of these subpoenas, of course without waiving its right to seek a Petition to Revoke.

When you say you want to cooperate regarding the timing of their discovery, can you please clarify? I



believe you know that the Region is not calling any of the individuals they subpoenaed in their case-in-chief, but are instead allowing them to be called by Google first. Is that not your intent?

Thanks,  
Sara

---

<<http://www.paulhastings.com/>>  
<image001.png><<http://www.paulhastings.com/>>

Sara B. Kalis | Of Counsel  
Paul Hastings LLP | 200 Park Avenue, New York, NY 10166 | Direct: +1.212.318.6021 |  
Cell: +1.952.240.4558 | Fax: +1.212.319.4090 | [sarakalis@paulhastings.com](mailto:sarakalis@paulhastings.com)<  
<mailto:sarakalis@paulhastings.com>> | [www.paulhastings.com](http://www.paulhastings.com)<<http://www.paulhastings.com/>>

From: I burgess <[lburgess@burgess-laborlaw.com](mailto:lburgess@burgess-laborlaw.com)>  
Sent: Friday, August 6, 2021 6:23 PM  
To: Kalis, Sara <[sarakalis@paulhastings.com](mailto:sarakalis@paulhastings.com)>  
Subject: [EXT] Subpoena ad testificandum

Sara - greetings. When we previously spoke about issuing subpoena ad testificandum you mentioned that you would be willing to accept service for some of the individuals I listed. I believe that the Region may have already issued subpoenas to some of these folks but I do have my own set of subpoenas to issue. At this time I plan to subpoena Kent Walker, Brad Fuller, Stephen King, Heather Adkins and Thomas Kurian.

I am glad to try to cooperate with you about timing of their testimony. I will be able to provide you with a better sense of that once we receive discovery responses. It's possible that after receiving those responses I decide not to call some of these individuals at all.

Please let me have your thoughts about this at your earliest convenience.

Thanks,  
Laurie

p.s. you might alert your secretary/assistant that there is a new heading for the cases and that Amr can be dropped from the service list. Not a big deal but going forward it might eliminate confusion.

Laurie M. Burgess, Attorney  
(312) 320-1718 (cell)

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\*\*\*\*\*

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Laurie M. Burgess, Attorney

(312) 320-1718 (cell)

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**NOTICE OF FILING AND CERTIFICATE OF SERVICE**

Please take notice that this 22<sup>nd</sup> day of August, 2021, the undersigned e-filed the attached **Interveners' Response to Google's Petition to Revoke Subpoena Ad Testificandum No. A-1-1D81Z7L (Kent Walker)** with Region 20, and Division of Judges, Honorable Administrative Law Judge Eleanor Laws, a copy of which is hereby served upon you.

**Charged Party / Respondent**

Legal Representative  
Latham, Al  
Paul Hasting LLP  
allatham@paulhastings.com

515 South Flower Street  
25th Floor  
Los Angeles, CA  
90071-2228

**Charged Party / Respondent**

Legal Representative  
Fox, Cameron  
Paul Hastings, LLP  
cameronfox@paulhastings.com

515 South Flower Street  
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Los Angeles, CA  
90071-2228

**Charged Party / Respondent**

Legal Representative  
Distelburger, Eric  
Paul Hastings LLP  
ericdistelburger@paulhastings.com

101 California St Fl 48  
San Francisco, CA  
94111-5871

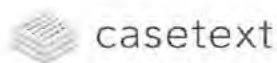
**Charged Party/Respondent**

Legal Representative  
Sara Kalis  
sarakalis@paulhastings.com

200 Park Avenue  
New York, NY  
10166

**Charging Party**

Legal Representative, CWA  
Patricia M. Shea  
pats@cwa-union.org



JX

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The Respondent violated Section 8(a)(3) and (1) of the Act by unlawfully terminating Keith Ludlum on February 3, 1994.

*(e) Lawanna Johnson*

Lawanna Johnson worked for the Respondent from November 1992 to November 1993 in the conversion department on the cut floor. She was on the employees' union organizing committee and her name was included in the letter which was sent to the Respondent noting that fact. Lawanna Johnson testified that the letter (CP Exh. 3), was posted in the plant in several locations; that her supervisor, Marty Hast, told her in the presence of other employees that he had seen her name on the letter for organizing for the Union and the Company did not want the Union in the plant; that in early 1993 she attended a meeting conducted by Henry Morris who she believed was the plant superintendent at the time; that when Morris said that the Company had an open door policy and would be willing to work with the employees on any problem she stood up and spoke out saying that "this is a bunch of bologna, a bunch of lies. They're [sic] not an open door policy. They're [sic] not going to do anything for us";<sup>77</sup> that she did not recall anyone else standing up and speaking out at this meeting; that shortly after the meeting Hast told her she had to do the floor twice by herself when normally there would be two men on that job; that her normal job at the time was skinning and packing ribs and she had never been assigned this cleaning job before; that in the spring of 1993 she applied for different jobs seeking higher pay but she did not get any of the jobs; that Harold Allen, who was a supervisor in the department next to hers, told her during a break that she could not get another position because everyone knew that she was for the Union;<sup>78</sup> that in July 1993 she did get a blade job (cutting the meat from the bones) unofficially when she switched with another lady who was having a problem with her hands, but she did not get the higher pay for the job; that when she asked about the pay Hast told her she was not qualified for the position; that Hast did tell her that he thought she was doing a good job; that she got a job on the cut floor working under Dale Smith; that she experienced problems with her hands on the blade job; that she saw the company doctor who told her that it seemed like she had carpal tunnel syndrome; that she took time off from work because her hands were swollen and ached and she had to take medication; that she also missed time from work when her husband was sick with deterioration of the lung tissue and had to be taken to the hospital; that on September 9, 1993, she attended a union cookout and she saw some of the

ere but she could not recall their  
perintendent



Download

, 1993, Cut Floor Super-  
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and they returned hor

<sup>77</sup> Henry Morris testified that he did remember an employee standing

# Exhibit B

**To:** Kyle Dhillon  
**Date:** January 6, 2020  
**From:** Ben Johns  
**CC:** Jeff Gilbert, Hartwig Adam  
Kibra Yemane, People Consultant  
Kimia Busse, People Partner  
**Re:** Final Written Warning

**Contains Confidential Information**

Kyle,

As you are aware, Global Investigations and Ethics & Compliance recently investigated concerns regarding the unauthorized emergency rapid release of a modification to the Security and Privacy Policy Notifier Chrome Browser Extension. The modification was created by a Software Engineer and was approved via a "LGTM" (Looks Good To Me) by you. It was determined that you knowingly and intentionally gave your LGTM approval for the pop-up using the Security and Privacy Policy Notifier for messaging that was neither a security nor a privacy reminder, without business justification. Your actions were found to be in violation of Google's policy, including the Basic Security Policy and the Change Management Security Policy. The details of that investigation were discussed with you on December 13, 2019 and were based on a recommendation by the the Access Review Committee that was approved by your Senior Director, Blaise Aguera y Arcas.

Your behavior in this situation was found to be inappropriate, and in violation of the Basic Security Policy, the Change Management Security Policy. You have been advised to review the above linked policies and re-read the Standards of Conduct Policy. Please ensure that you are clear on what is required to comply with them going forward. In addition to the above, your leadership wants to ensure that you are following Google's established rules regarding the kinds of approvals that require business justification. As part of your return from administrative leave, there will be a suspension of your change list approval privileges. The details of that suspension will be communicated to you in due course.

In addition, there was a review of your conduct concerning the creation of the "always-ask-Kent" extension. The Ethics & Compliance team concluded that, based on the

clear on what is required to comply with them going forward. In addition to the above, your leadership wants to ensure that you are following Google's established rules regarding the kinds of approvals that require business justification. As part of your return from administrative leave, there will be a suspension of your change list approval privileges. The details of that suspension will be communicated to you in due course.

In addition, there was a review of your conduct concerning the creation of the "always-ask-Kent" extension. The Ethics & Compliance team concluded that, based on the facts found, there had not been a policy violation with respect to that extension. The team explained to you, however, that the use of that extension had the potential of violating the Standards of Conduct Policy by unreasonably interfering with executive team members' productivity or other legitimate goals. But that had not occurred in this instance.

This final written warning is to remind you that as a Google employee, you are expected at all times to act in a way that is consistent with our security policies. Copies of the relevant portions of the policies cited above are attached, to which you have access. Please read these and ensure that you are clear on what is required to comply with them going forward.

In addition, you understand that if you violate Google policy or otherwise engage in inappropriate conduct in the future, you could be subject to additional disciplinary action up to and including termination of employment.

If you have any questions concerning this document, please contact People Consultant, Kibra Yemane who can speak with you whenever the need arises.

**ACKNOWLEDGMENT:**

I acknowledge that I have read the above memo and have received a copy.

---

Kyle Dhillon

---

Date

# Exhibit C



Oct 22, 2019, 7:28 AM

**"We've been tasked by the C-suite team to provide a chrome extension that makes it easier for Googlers to follow policies."**

## HOW TO BUILD A DYSTOPIAN WORLD

👍 +979 💬 ☆



Template [how\\_to\\_build\\_a\\_dystopian\\_world](#)

Context <https://docs.google.com/document/d/1Xr-dCb29WfHCugjHOZiNPEW835fhNDkT8Fc96mtRqiw/preview>



Oct 24, 2019, 4:40 PM

# Who made the design doc private?



+187



Template

[dontknow](#)

Comments (2)

Metrics



Oct 24, 2019, 4:43 PM

**You say "documents get locked down  
for good reason" but didn't GIVE the reason**

**And that was the question**

👍 +904 💬 ☆



Template

seinfeld car reservation\_better\_animated



Nov 2, 2019, 1:48 PM



👍 +156 💬 ☆



Template

[hawtch\\_hawtchers](#)

Context

[go/community-guidelines-in-action](#)

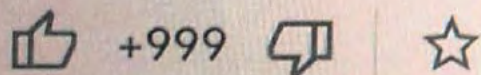


Nov 15, 2019, 5:45 PM



**We've clarified our  
longstanding policies**

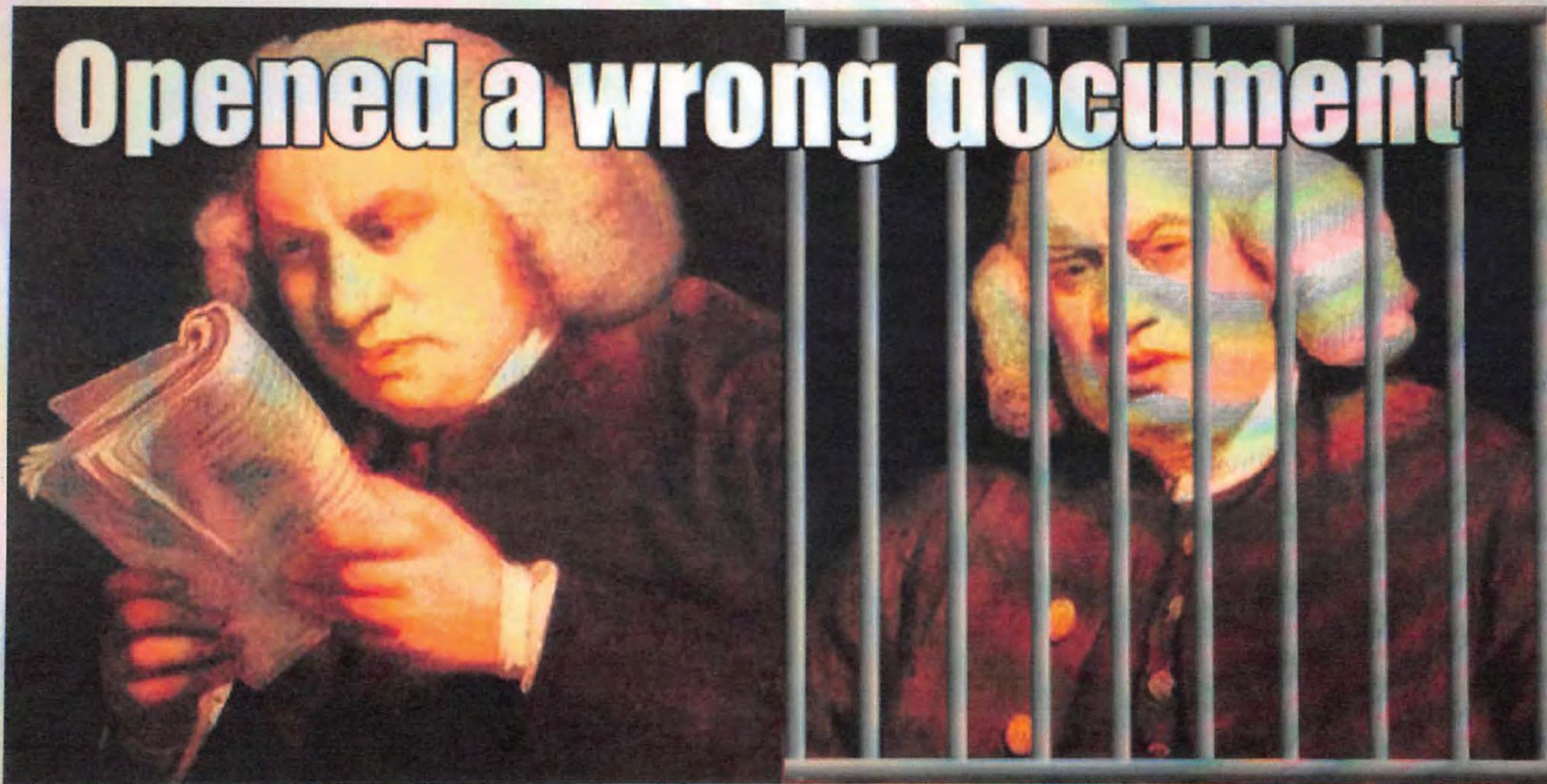
**Pray that we don't  
clarify them any further.**





Nov 13, 2019, 9:49 AM

# Opened a wrong document



+1093





**Nice union you got there**

**It would be a shame if all the  
unmarked documents the  
organizers accessed were  
retroactively made need-to-know**



**Some recent communications from  
execs are being designed to  
deliberately blur lines.**

**And scare people into thinking  
twice about questioning anything.**

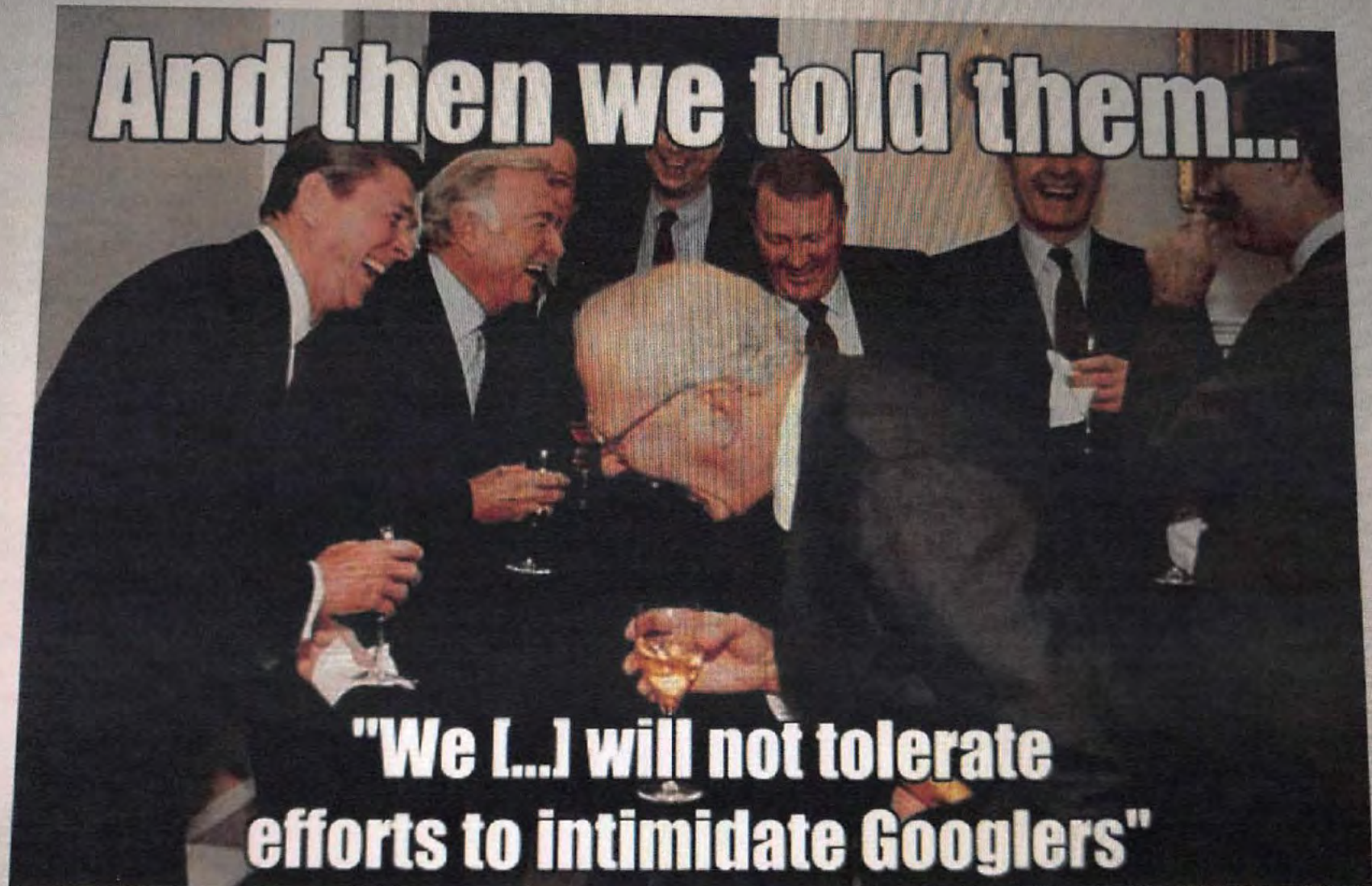
**Fear of retaliation among Googlers  
will mean Maven 2 or other controversial  
projects can go ahead easier**



+454







👍 +126 💬 ☆



Template laughing\_bosses

Context <https://groups.google.com/a/google.com/forum/#!topic/google/h718P1gvWTs>

# Exhibit D





By Kent Walker

I understand a few people are talking about our Need to Know policy and our Community Guidelines. Sharing information is obviously important to Googlers and Google. Our guidelines in this area are designed to provide clarity on how we can get, share, and secure the information we need to do our work. These are of course fine things to discuss, but there are some inaccurate theories circulating, so while we generally don't provide details of personnel decisions, I wanted to provide some background facts.

First, no one was put on administrative leave for merely accessing or opening a single need-to-know doc. We do carefully and thoroughly investigate and take action against violations of our policies, particularly when they result in wide sharing of confidential material, external leaks of internal-only material, or behavior that makes our employees feel unsafe. To be specific:

1. An individual was recently terminated for leaking Googlers' names and personal details to the media. This sort of thing is simply not ok. We've seen leaks of emails, internal discussion threads, live TGIF discussions, MOMA screenshots, calendar invites, and more, as a way of criticizing fellow employees or developments at Google. For example, not only did the content of a recent TGIF leak, but we got an email from a reporter following a recent Social TGIF (i.e., where people get together to socialize and snack) asking why our internal calendar invite didn't include "the usual link" to enable people to remotely access it (the reporter wrote "this does appear to be the case based on screenshots I saw of the prior calendar invite and the most recent one").
2. A second person has been put on leave while the investigations team looks into why they deliberately searched for, accessed, and shared a number of confidential or need-to-know documents outside the scope of their job, after receiving prior feedback not to do so. Many of these documents subsequently appeared in the press.
3. A third person has been put on leave while we investigate a series of actions they took, including tracking a wide range of individual calendars of folks on the Community Platforms, POps, and Comms teams, causing a lot of stress for people who are just trying to go about their work.

I've seen some comments saying that our approach to these things has changed, but I've been here a long time, and I can tell you that Google never tolerated this type of behavior. If we live up to our goals as a company, we have the potential to develop incredible products and services that can help billions of people around the world. While it's great to have constructive disagreements, we can't let internal wrangling get in the way of that mission. We need an environment that lets us work well with each other on our shared goals.



## Community Guidelines Policy [11/12/2019]

By Kent Walker

I understand a few people are talking about our Need to Know policy and our Community Guidelines. Sharing information is obviously important to Googlers and Google. Our guidelines in this area are designed to provide clarity on how we can get, share, and secure the information we need to do our work. These are of course fine things to discuss, but there are some inaccurate theories circulating, so while we generally don't provide details of personnel decisions, I wanted to provide some background facts.

First, no one was put on administrative leave for merely accessing or opening a single need-to-know doc. We do carefully and thoroughly investigate and take action against violations of our policies, particularly when they result in wide sharing of confidential material, external leaks of internal-only material, or behavior that makes our employees feel unsafe. To be specific:

1. An individual was recently terminated for leaking Googlers' names and personal details to the media. This sort of thing is simply not ok. We've seen leaks of emails, group discussion threads, live TGIF discussions, MOMA screenshots, calendar invites, and more, as a way of criticizing fellow employees or developments at Google. For example, not only did the content of a recent TGIF leak, but we got an email from a reporter following a recent Social TGIF (i.e., where people get together to socialize and snack) asking why our internal calendar invite didn't include "the usual link" to enable people to remotely access it (the reporter wrote "this does appear to be the case based on screenshots I saw of the prior calendar invite and the most recent one").
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I've seen some comments saying that our approach to these things has changed, but I've been here a long time, and I can tell you that Google never tolerated this type of behavior. If we live up to our goals as a company, we have the potential to develop incredible products and services that can help billions of people around the world. While it's great to have constructive disagreements, we can't let internal wrangling get in the way of that mission. We need an environment that lets us work well with each other on our shared goals.

# Exhibit E

REDACTED - SBI/NR

All right. Let's get the presenters up. Come on up. And let's switch to dory.

All right.

Many Googlers are concerned with the updates to the data clarification policies. Especially when it comes to their impact on Google's open culture. Could you please clarify and reword those policies?

Kent is here.

>>Kent Walker: Hey, guys. Are we live? There we go.

So it was my announcement that came up, so I wanted to come and chat with people about this. Thank you for the question and the chance to clarify. There have been some misunderstandings about what the policy does and doesn't say.

So first off, it's important to note that we've always had formal policies on sensitive data



formally since 2007 and always had policies around data security. It's never been okay to use or share this kind of data, user data, customer data, without authorization, whether it was labeled or not. And we actually have fired people who have inappropriately accessed sensitive data, user data, privacy information, et cetera, where there wasn't a business justification for doing that.

The rule here is pretty simple: Don't use data that was meant for a specific purpose for anything other than that purpose.

At a company our size, we need to have rules of the road to make sure we're all on the same page about this sort of stuff. We have a lot of new people coming in -- welcome, Nooglers -- and many others who may not be aware of the policy. So we wanted to make sure that it was broadly understood. We obviously have had some leaks of both confidential information and need-to-know information, and we're now working both directly and indirectly on a lot of new areas, whether that's health care or financial services, et cetera, where we and our partners have responsibilities legally and contractually and to end users, to patients, to keep information confidential.

So when we write our policies to deal with this huge number of different things that Google is involved in, we try to write them in a short and a simple and a non-bureaucratic way, treating all -- all of us as smart, reasonable people. We don't want to be one of those companies with a 300-page manual where you have, you know, one form for stapler requisitions -- and I can't remember the office space example, the form 87J, and here's their records retention requirement and here's exactly how it's characterized. We want to have 1-, 2-, 3-page policies, with some illustrative examples, and let you use your common sense to make the right decision.

So given our evolving business, it probably wouldn't work anyway to have incredibly granular descriptions of everything we do. So when we update these policies, we're typically adding examples and doing things that are exactly meant to clarify the purpose. We want to keep the wording simple and clear.

I've actually gone back and looked at the examples in this policy, and I think they are representative of the kinds of documents that we have in mind.

We never required everybody in the company to label every document you create. That wouldn't be feasible or manageable. And, again, many kinds of information are obviously need-to-know or confidential.

It helps to have a label. It helps to avoid accidental access and the like. But, again, we look to you guys to use your common sense, to evaluate the nature of the information, just like we always have.

So we interpret these policies reasonably. We're not gonna fire somebody for accidentally stumbling across a need-to-know document. Come on. That would be silly. We spend a lot of time and effort to find and bring in some incredibly talented people.

On the other hand, if somebody trolls through a bunch of other people's documents, seeking what's obviously need-to-know information, and there's not a justified business purpose for it, that's pretty obviously a different deal.

So bottom line: If you come across something that you reasonably think is need-to-know material, but you're not sure, check with the author of the team. We have had questions already of the security and privacy team, that alias SP@, to ask questions about? What about this

category of document or that category of document? That's great. That's a really good way to answer any follow-up questions you might have.

So thanks for your work on this.

[ Applause ]

>>Sundar Pichai: All right. You may want to stay. I think there's one more question.

We're having less TGIFs. Reading other teams' slides and design docs can lead to disciplinary action.

I think Kent clarified that part.

More than ever we get to know of our new products from the press earlier than from our peers. How can we ensure we don't instill a fear of information that hurts innovation?

>>Kent Walker: Yeah. So we share this goal, right? We want to have an open and transparent and collaborative kind of environment as we work on these issues. And at the same time, it's important that we have a clear understanding about how information can be shared and, you know, what information is appropriate to share freely. That's why we need those rules of the road I talked about a moment ago, precisely because leaks of information can erode the kind of trust that allows us to collaborate.

So in a sense, I mean, this is -- I come to pretty much every TGIF. And we, Sundar, other leaders, take some hard questions. And we try our best to give you straight answers to those questions, because that's how we think we should operate. You may not always agree with every answer you get, but that's okay too. We may make mistakes. None of us is perfect. But when you leak about our business, that's corrosive. That undermines the spirit of trust that lets us work together so well.

So ask us the tough questions, but please don't leak. Thanks.

[ Applause ]

>>Sundar Pichai: Thank you.

The only thing I would add is, I think a lot of what is originating all this is we generally deal with very confidential user data. Historically, we've always understood how sacred consumer data is but, you know, when we talk about respecting our users, increasingly our users are other companies, other institutions, and we make representations, legally, contractually, about how their data can be shared within Google, right? And so I think it's incredibly important to get this right so that we can actually honor the contracts we sign with customers as well.

But appreciate the question. I think it was a good discussion, and I'm sure we'll continue clarifying it.

REDACTED - SBI/NR

## **NOTICE OF FILING AND CERTIFICATE OF SERVICE**

Please take notice that this 22<sup>nd</sup> day of August, 2021, the undersigned e-filed the attached **Interveners' Response to Google's Petition to Revoke Subpoena Ad Testificandum No. A-1-1D81Z7L (Kent Walker)** with Region 20, and Division of Judges, Honorable Administrative Law Judge Eleanor Laws, a copy of which is hereby served upon you.

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National Labor Relations Board

### **CERTIFICATE OF SERVICE**

I, Laurie M. Burgess, Burgess Law Offices P.C., certify that this 22nd day of August, 2021, served a copy of the foregoing **Interveners' Response to Google's Motion to Revoke Subpoena Ad Testificandum No A-1-D81Z7L (Kent Walker)** on the above parties of record, by and through their counsel, by sending a copy of same via email (lburgess@burgess-laborlaw.com) to their individual email addresses above.

Dated: August 22, 2021

  
Laurie M. Burgess  
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San Francisco, CA 94110  
(312) 320-1718



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 20**

COMMUNICATIONS WORKERS OF  
AMERICA, AFL-CIO,

Charging Party,

vs.

GOOGLE LLC and ALPHABET INC., a single  
employer,

Respondents.

**CASE NO. 20-CA-252957,  
20-CA-253105, 20-CA-253464**

**RESPONDENTS GOOGLE LLC AND  
ALPHABET INC.'S REPLY IN  
SUPPORT OF THEIR PETITION TO  
REVOKE SUBPOENA AD  
TESTIFICANDUM NO. A-1-1D81Z7L;  
SUPPLEMENTAL DECLARATION  
OF KENT WALKER**

The opposition brief filed by the alleged discriminatees' counsel suffers from five important defects:

- ***First***, to the extent the alleged discriminatees rely on the Community Blog Post that was posted under Mr. Walker's name (Exhibit D to the alleged discriminatees' response), it does not support their claim that Mr. Walker "was an active participant" in the at-issue disciplinary actions. As an initial matter, Mr. Walker did not author the statement. *See* Supplemental Declaration of Kent Walker, attached as Exhibit A. The blog post was authored by others, and was posted under Mr. Walker's name. *Id.* Moreover, the only portion of the blog post that even refers to any of the alleged discriminatees in this case is the two sentences that appear as paragraph 2:

2. A second person has been put on leave while the investigations team looks into why they deliberately searched for, accessed, and shared a number of confidential or need-to-know documents outside the scope of their job, after receiving prior feedback not to do so. Many of these documents subsequently appeared in the press.

Those two sentences (again, authored by others) hardly reflect actual involvement by Mr. Walker in that individual's discipline, or the underlying investigation. Mr. Walker did

not then, and does not now, have first-hand personal knowledge of the facts stated in those sentences. The point remains: Mr. Walker was not involved in the investigations of, or the disciplinary decisions related to, the alleged discriminatees. *See* Walker Declaration submitted with Google’s Petition to Revoke.

- **Second**, one of Google’s points is that counsel for the alleged discriminatees has not identified any fact that supposedly needs to be established through Mr. Walker’s testimony.<sup>1</sup> That is still the case, even after a thirteen-page opposition brief. Instead, the alleged discriminatees rely on nothing more than a conclusory statement that Mr. Walker “is the single thread that runs through the entire consolidated complaint.” Simply put, nothing supports that statement. Just saying it does not make it true.
- **Third**, it is notable that the alleged discriminatees still have not made any attempt to pursue a factual stipulation regarding any supposed fact that they seek to establish through Mr. Walker’s testimony. As described in *Shelton*, that failure further reflects that the alleged discriminatees are, in fact, seeking an opportunity to delve into his mental impressions and privileged communications. *See Shelton v. Am. Motors Corp.*, 805 F.2d 1323, 1330, fn. 7 (8th Cir. 1986) (finding that several factors supported that plaintiffs’ counsel was attempting to discover opposing counsel’s mental impressions on the case, including their rejection of the company’s offer to establish facts through other methods that would not run the risk of invading privilege). That is improper.
- **Fourth**, the alleged discriminatees’ opposition is strikingly devoid of Board law – and for good reason. No Board law of which Google is aware supports forcing an in-house counsel to testify on a record like this. The alleged discriminatees argue that the attorney-client privilege should not automatically apply to in-house counsel, but Google

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<sup>1</sup> Counsel for the General Counsel determined long ago that Mr. Walker is not a needed witness, opting instead to stipulate to the limited number of points and documents that involve his name, such as his receipt of the prank emails described in Google’s Petition to revoke, and his May 9, 2019 email describing Google’s policies.

is not arguing it does. Mr. Walker's declaration, submitted with Google's Petition to Revoke, establishes his limited role vis-à-vis this case as an attorney.

- **Finally**, the alleged discriminatees' argument that the so-called "Shelton test" does not apply is incorrect. See authorities provided in Google's Petition to Revoke, p. 4. Importantly, the alleged discriminatees' opposition concedes that neither the second nor third factor of the Shelton test is satisfied here. All are required. *Shelton*, 805 F.2d at 1327.

DATED: August 23, 2021

Respectfully submitted,  
PAUL HASTINGS LLP  
CAMERON W. FOX  
J. AL LATHAM, JR.  
SARA B. KALIS  
ERIC DISTELBURGER

By:   
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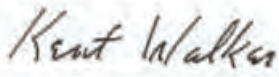
Attorneys for Respondents  
GOOGLE LLC and  
ALPHABET INC.

**EXHIBIT A**  
**DECLARATION OF KENT WALKER**

I, Kent Walker, do hereby declare and state as follows:

1. I have personal, first-hand knowledge of the facts set forth in this declaration and, if called upon to do so, I could and would testify competently to them.
2. I make this Declaration in support of Respondents Google LLC and Alphabet Inc.'s Reply in Support of Petition to Revoke Subpoena *Ad Testificandum* No. A-1-1D81Z7L.
3. I am the Chief Legal Officer and Senior Vice President of Global Affairs for Google. I have held those titles since 2018, before which I served as General Counsel.
4. In November 2019, I authorized and approved a community blog post that used my name concerning Google's Need to Know policy and its Community Guidelines. A copy is attached as Exhibit D to Intervener's Response to Google's Petition. The content of that post was authored by others, reviewed and approved by me, and posted under my name. With regard to the statements made in paragraph 2 of that post, which is the portion discussing an alleged discriminatee, I did not then, and do not now, have any first-hand personal knowledge of those facts.
5. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 23rd day of August 2021 at Palo Alto, California.

  
\_\_\_\_\_  
Kent Walker

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of August, 2021, I electronically filed the foregoing **RESPONDENTS GOOGLE LLC AND ALPHABET INC.'S REPLY IN SUPPORT OF THEIR PETITION TO REVOKE SUBPOENA AD TESTIFICANDUM NO. A-1-1D81Z7L** with the National Labor Relations Board using the agency's website ([www.nlr.gov](http://www.nlr.gov)). I also certify that I have served said **RESPONDENTS GOOGLE LLC AND ALPHABET INC.'S REPLY IN SUPPORT OF THEIR PETITION TO REVOKE SUBPOENA AD TESTIFICANDUM NO. A-1-1D81Z7L** upon the following parties, via e-mail, pursuant to NLRB Regulation 11846.4(b):

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DATED: August 23, 2021

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